

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. RDB 09-CR-560

LEWIS KEVIN LUCAS,

Defendant.

Day One of the JURY TRIAL in the above
matter, held on Monday, July 19, 2010, commencing at 9:43 a.m.,
before the Honorable Richard D. Bennett, in the United States
Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201.

APPEARANCES:

CLINTON JACOB FUCHS, Esq.,
JOHN WALTER SIPPEL, JR., Esq.,
Appearing on behalf of the Government,

KATHERINE TANG NEWBERGER, Esq.,
BRENDAN A. HURSON, Esq.,
Appearing on behalf of the Defendant.

Reported by:
Julie A. Wycoff, RPR
Official U.S. Court Reporter

1 (Proceedings commence in open court.)

2 THE COURT: Good morning, everyone.

3 Mr. Fuchs, if you'll call the case, please.

4 MR. FUCHS: Yes, Your Honor.

5 This is the United States of America versus Lewis
6 Lucas, Criminal Case Number 09-560. This matter is set for
7 trial this morning. Clint Fuchs and John Sippel on behalf of
8 the United States. With us at counsel table is John Hayden from
9 the ATF.

10 THE COURT: Yes, Mr. Fuchs, Mr. Sippel, good morning.
11 Nice to see you.

12 And good morning, Agent Hayden.

13 MR. HAYDEN: Good morning, Your Honor.

14 THE COURT: Nice to see you.

15 You're with the Bureau of Alcohol, Tobacco, Firearms
16 and Explosives; is that right?

17 MR. HAYDEN: Yes, sir.

18 THE COURT: And he's designated as the case agent?

19 MR. FUCHS: That is correct, Your Honor.

20 THE COURT: Nice to see you.

21 And on behalf of the defendant?

22 MS. NEWBERGER: Thank you, Your Honor. Katherine
23 Newberger and Brendan Hurson from the Federal Public Defender's
24 Office. With me at counsel table is Mr. Lucas.

25 THE COURT: All right. Good morning, Ms. Newberger,

1 Mr. Hurson. Nice to see you.

2 And good morning, Mr. Lucas.

3 THE DEFENDANT: Good morning.

4 THE COURT: All right. We're ready to proceed with
5 the jury trial in this case. I think we've dealt with all
6 preliminary matters, any motions.

7 Are there any preliminary matters from the point of
8 view of the Government to the address?

9 MR. FUCHS: No, Your Honor. Thank you.

10 THE COURT: Are there any preliminary matter from the
11 point of view of the defendant to address?

12 MS. NEWBERGER: No, Your Honor.

13 THE COURT: All right. I think that you all have a
14 copy of voir dire and the preliminary instructions.

15 Do you both have that?

16 MR. FUCHS: We do, Your honor.

17 All right. Ms. Newberger?

18 MS. NEWBERGER: Yes, Your Honor.

19 THE COURT: Okay. And so there are no objections as
20 to that, the voir dire and the preliminary instructions. We are
21 ready to proceed here with the bringing in --

22 Let me just go over a few matters.

23 First of all, Mr. Lucas, with respect to any meetings
24 up here at the bench during the selection of the jury, you do
25 not come up here to the bench, but there's a headset that will

1 be provided to you by the Deputy Clerk of Court, Mr. Thompson,
2 to make sure that you can hear any discussions up here at the
3 bench. And that is true throughout the trial as well as with
4 respect to any motions.

5 Let me see if my system's is working here.

6 You'll hear that noise, Mr. Lucas, and that will --
7 it's sort of a white noise sound, but you'll be able to hear
8 with your headset.

9 Does he have the headset down there?

10 Mr. Lucas, put the that on and let me make sure that
11 you can hear, and I can verify that the headset is operating for
12 you.

13 All right. Are you ready?

14 Here I'm going to put this -- can you hear me,
15 Mr. Lucas?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. The record will reflect that
18 we've verified the headset is operational for the defendant.

19 There are no pretrial matters or objections, and there
20 are no objections to voir dire, preliminary instructions. So I
21 think we're all set.

22 With respect to the witnesses in this case, let me
23 just go over that right now.

24 All right. The following people may be mentioned by
25 various -- may be witnesses or may be mentioned by various

1 witnesses are Sean Dorr, Ted Turner, Dan Kerwin -- that's
2 Special Agent Dan Kerwin.

3 And what is Ted Turner's occupation?

4 MR. FUCHS: Your Honor, he's a firearms examiner for
5 BPD, but I can let the Court know that defense counsel and the
6 defendant have signed a stipulation to --

7 THE COURT: So you will not be testifying?

8 MR. FUCHS: He will not be testifying.

9 THE COURT: We're taking him out then.

10 We've got Sean Dorr from the Baltimore City Police
11 Department, Special Agent Dan Kerwin, Detective Jonathan Hayden,
12 Officer Patrick Huter, Officer Fabien Laronde, and Sean Dorr.

13 So we're talking about five witnesses, correct?

14 MR. FUCHS: Your Honor, Special Agent Hayden will not
15 be testifying. He is our case agent, but he is --

16 THE COURT: But I'll still make reference to him
17 because he's the case agent.

18 Hold on just one second.

19 Any other witnesses I should list from the point of
20 view of the Government?

21 MR. FUCHS: No, Your Honor.

22 THE COURT: From the point of view of the defense?

23 MS. NEWBERGER: No, Your Honor.

24 THE COURT: Okay. So we have the list here.

25 Basically there will just be reference to the case

1 agent, Mr. Hayden; Special Agent Dan Kerwin; Officer Patrick
2 Huter; Officer Fabien Laronde; and Sean Dorr of the Baltimore
3 City Police Department, Latent Print Unit. So we have a total
4 of potential four witnesses.

5 Okay. Then the other matter I want to go over is
6 Mr. Thompson will make sure that we line up the jury panel in
7 alphabetical order.

8 Pete, I don't need those cover sheets in the
9 beginning. I just like to have the sheet with the names, if you
10 can just take off that excess stuff, papers that are in front.
11 I don't need those.

12 As I've said, any objections or strikes for cause will
13 be here at the bench. If I don't strike them for cause, you
14 move at that point in time to strike them from cause and you'll
15 know my ruling right away on that.

16 The people will be lined up in numerical order. I see
17 there's a member of Mr. Lucas' family here; is that correct?
18 Who is here on behalf of the defendant?

19 WOMAN IN GALLERY: I'm his fiancée.

20 THE COURT: I'm sorry?

21 WOMAN IN GALLERY: His fiancée.

22 THE COURT: All right, his fiancée.

23 Ma'am, you will have to be seated -- you can stay back
24 in the corner there. You cannot be seated with the jury during
25 the selection. You don't have to leave yet, but when the jury

1 comes in, you cannot be seated with the jury. So you will just
2 need to -- we'll arrange for you to take a chair and sit back
3 there in the corner with the chair, but you'll not able to sit
4 with the jury during jury selection.

5 And with that, I think we're ready to bring the jury
6 in.

7 Anything further in the point of view of the
8 Government?

9 MR. FUCHS: No, Your Honor. Thank you.

10 THE COURT: From the defense?

11 MS. NEWBERGER: No, Your Honor.

12 THE COURT: All right. So with that, I'll stand in
13 recess for a period of time, wait to be called back in.

14 Court stands in recess.

15 (A recess was taken, followed by the selection of
16 the jury, which is not herein transcribed.)

17 (Luncheon recess.)

18 THE COURT: We're ready to bring the jury in and
19 proceed with opening statements; is that correct?

20 MR. FUCHS: Yes, Your Honor.

21 DEPUTY CLERK: Jurors all present.

22 THE COURT: Thank you, Mr. Thompson. You may all be
23 seated.

24 Ladies and gentlemen, sorry for the delay. We had a
25 delay at lunchtime on other matters. It's my fault we're

1 starting a little bit late. I do apologize to all of you.

2 And with that, we're ready to hear from -- opening
3 statements from counsel.

4 Mr. Fuchs?

5 MR. FUCHS: Thank you, Your Honor.

6 Good afternoon, ladies and gentlemen. My name is
7 Clint Fuchs. And over the next few days my co-counsel, John
8 Sippel, and I are going to present to you the Government's case
9 against Mr. Lewis Lucas.

10 What you're going to hear is that on the early morning
11 of July 6 of last year, 2009, two Baltimore City Police
12 Officers, Pat Huter and Fabien Laronde, were patrolling the 2700
13 block of Wilkens Avenue, West Baltimore. What they will tell
14 you is that, as they were patrolling, they saw the defendant,
15 Lewis Lucas, standing on the front porch of a row house. The
16 officers believed that Mr. Lucas looked like someone who was
17 wanted for questioning, so they made the decision to talk to
18 him.

19 They pulled the car over to the curb; and one of the
20 officers, Pat Huter, got out to speak with him. Officer Huter
21 got out of the car, and he said, Can I speak to you? Mr. Lucas
22 started coming down off the porch. Officer Huter noticed that
23 he was reaching towards the front of his pants, as if he was
24 checking for something.

25 When he got to the bottom of those steps, he started

1 to back away from Officer Huter. Officer Huter took a step
2 forward, asked if he could speak with him. Mr. Lucas turned and
3 took off running.

4 Officer Huter noted that as Mr. Lucas was running, he
5 kept one of his arms right here against his body; and it looked
6 like he was holding something in front of his pants. Officer
7 Huter gave chase on foot down Wilkens Avenue. Officer Laronde,
8 who stayed in the car, followed in the vehicle on the street.

9 Officer Huter and Officer Laronde saw Mr. Lucas make
10 it to the end of the block. He cut down a side street, and then
11 he cut up a very small, narrow alley, which ran behind some
12 buildings. Officer Huter followed him up that alleyway; and, as
13 he did, he saw Mr. Lucas take what looked like a handgun out of
14 his pants and throw it to the ground as he ran.

15 Officer Huter caught up to him a few steps later,
16 tackled him to the ground. They wrestled for a time.
17 Eventually, Officer Huter was able to put him in cuffs, placed
18 him under arrest.

19 Officer Laronde parked the car. He eventually joined
20 them in that alleyway, and he found in the area in the alleyway,
21 where Officer Huter had seen what looked like a gun land, he
22 found a loaded .22 caliber revolver.

23 Based on that, Mr. Lucas is here today, as the Judge
24 told you, charged with possession of a firearm after having been
25 previously convicted of a crime punishable by more than a year

1 in prison. As the Judge told you, in order to make its case,
2 the Government has to prove several things:

3 First, we must -- obviously, we have to show that
4 Mr. Lucas knowingly possessed that gun.

5 Again, we have to show that Mr. Lucas was previously
6 convicted of a crime punishable by more than a year in prison.

7 The Government also has to show that that .22 caliber
8 revolver was a firearm. It wasn't a toy; it wasn't a BB gun.
9 It was an actual gun. And we also have to show that at some
10 point that gun moved in interstate commerce. All that means is
11 that the gun was not made here in Maryland. It was made
12 somewhere else, and it traveled into Maryland before it was
13 recovered on July 6 of last year.

14 And over the next day or so, you're going to hear
15 evidence establishing each of those four elements. You're going
16 to first hear what are called "stipulations." It's just an
17 agreement among the parties. Those stipulations will be, first,
18 that Mr. Lucas was previously convicted of a crime punishable by
19 more than a year in prison.

20 You're also going to hear a stipulation that that
21 firearm that was recovered, which you will see, is, in fact, a
22 firearm. It's designed to expel a projectile by the force of an
23 explosive, which is the definition of a firearm under federal
24 law.

25 You're also going to hear from an ATF agent. He's

1 going to testify that the gun that was recovered was a Taurus
2 .22 caliber revolver. It was made in Brazil. Therefore, it did
3 move in interstate commerce sometime between the time it was
4 made and the time it was recovered.

5 And then, most importantly, you're going to hear from
6 those two police officers: Pat Huter and Fabien Laronde. And
7 they're going to testify as to what they saw that night.
8 They're going to testify that they were patrolling in the 2700
9 block of Wilkens Avenue. They saw Lewis Lucas on that front
10 porch. They pulled over to talk it him. Officer Huter got out
11 of the car. Mr. Lucas came down the steps. When Officer Huter
12 took that step towards him, Mr. Lucas turned and ran.

13 They're going to testify that they followed him down
14 Wilkens, down that side street, up that alleyway. Officer Huter
15 is going to testify that he saw Mr. Lucas take what looked like
16 a gun out of his pants and throw it to the ground.

17 Officer Laronde is going to testify that he came into
18 the alley; he went to that place on the ground where Officer
19 Huter had seen the gun land; and he found a .22 caliber
20 revolver.

21 When taken together, you'll see all of that evidence
22 establishes those elements. It's going to show that on July 6
23 of last year, Mr. Lewis Lucas knowingly possessed a firearm that
24 moved in interstate commerce after having been previously
25 convicted of a crime punishable by more than a year in prison.

1 At that point, when the trial is over, Judge Bennett
2 is going to instruct you on the law. Mr. Sippel and I will have
3 a chance to talk to you again. At that point we're going to ask
4 you to return the only verdict that is consistent with all of
5 the evidence you're going to hear -- a verdict of guilty as
6 charged.

7 Thank you.

8 THE COURT: Thank you, Mr. Fuchs.

9 Mr. Hurson?

10 MR. HURSON: Thank you, Your Honor.

11 If only it were that simple. It's not enough.

12 It's not enough for the Government to come into this
13 courtroom and present you with a story -- a story that's based
14 on limited, uncorroborated testimony of one person; a story
15 that's based on inferences drawn from those limited, alleged
16 facts and then piece it together and tell you a story and say,
17 ladies and gentlemen, this is what happened; you should convict
18 this man.

19 It's not enough, because in our system in this
20 country, we do not convict our fellow citizens based on stories.
21 We don't convict people based on, this is what may have
22 happened. The Government just stood here and told you -- and,
23 I'll submit, Mr. Fuchs gave you a great story, but you're going
24 to see over the course of this case that that is not enough.

25 Because when the Government comes into this courtroom

1 and flexes its muscle and accuses one of your fellow Americans
2 of a crime, they're not pledging to make a story, what they're
3 saying is that we have proof beyond a reasonable doubt. That's
4 the standard in this country -- proof beyond a reasonable doubt.
5 When they accuse someone of committing a crime, that is the
6 standard.

7 And, in spite of this standard, the Government has
8 come in here and accused this man of a crime and is going to put
9 on this stand, really, one person who's going to tell you a
10 story about what he thinks he may have seen. And the Government
11 is going to spend the bulk of the rest of their case explaining
12 why you're not going to see additional evidence.

13 That, ladies and gentlemen, that's not enough. And
14 that's why, at the end of this case, my colleague is going to
15 come in front of you, and she is going to ask you to return a
16 verdict that is, not only fair, not only just, but the only
17 verdict that's supported under the law, and that's a verdict of
18 not guilty.

19 In the little time -- I want to take the rest of this
20 afternoon, not too much time -- I won't take the rest of the
21 afternoon -- I want to introduce you to myself and to the other
22 people in the courtroom. We met briefly, and we had some
23 dialogue through the Judge at the bench, but I'm Brendan Hurson.
24 I'm a lawyer. And I don't see any lawyers in this group, so
25 don't hold it against me. They're lawyers, too, so we're even.

1 And I'm joined by Katherine Newberger. She's going to
2 be also working this case and questioning some of the
3 Government's witnesses.

4 Now, the other gentleman at the table I'm honored and
5 privileged to represent, and this --

6 Mr. Lucas, if you'll stand up.

7 -- is Mr. Lewis Lucas. He's the man the Government
8 has accused of committing this crime.

9 You may sit down, Mr. Lucas.

10 While this is going to be a short trial on time, it is
11 a long trial on importance. It's important, obviously, to me,
12 but it's extremely important to each one of you. And I'll tell
13 you, it's important to each one of you because you're going to
14 be asked to make one of the most significant decisions you've
15 ever made in your life. You're being asked to pass judgment on
16 a fellow citizen, and that is a tremendous and awesome
17 responsibility. And I thank you in advance for taking that
18 responsibility as seriously as I know you will take it.

19 In this case, not only is it important to you, not
20 only is it important to us, it is important to Mr. Lucas. And,
21 under our law, Mr. Lucas sits here, yes, accused, but
22 innocent -- presumed innocent. And I trust, as you go through
23 your duties as jurors, you will never forget that fact.

24 Now, I stress the importance of this case to you, and
25 I say to you that this is not the easiest case for you. It may

1 be short, but as jurors it's difficult. There's often a
2 misconception that being a juror is kind of like watching a play
3 or watching a movie, where you sort of sit here, and you watch
4 as things unfold. And, technically, that's true.

5 In our system you don't get a chance to raise your
6 hand and ask questions. We sort of have to read your mind and
7 try to figure out, What are they asking? But don't let, for a
8 second, the fact that nobody asked you any questions until the
9 end, and nobody asked you to ask some questions, don't think for
10 a second that you're not the most important people in this room.

11 Now, I'll tell you in a second a little bit about the
12 difficulty of your job, but I want to make one thing clear, that
13 the Judge did state earlier. We can't talk to you. I would
14 love to talk to you about this case -- and as Katherine can
15 attest -- and could talk to you about a lot of things, I love to
16 talk, but we can't. That's the rules. So we may pass you in
17 the hallway, and we simply would nod hello and move on. And
18 it's not out of rudeness; it's out of the rules of this Court.
19 So, if you pass any one of us, and we sort of seem to be
20 avoiding you, that's why. And I thank you for understanding
21 that.

22 But I go back to the importance and how serious and
23 how difficult your job is, because this case is a case really
24 that's built on circumstantial evidence. You got a brief
25 instruction before, and you may get one again, about the

1 difference between circumstantial and direct evidence. And
2 while you may have listened -- I'm sure you listened closely to
3 that instruction, I would say to you that a case based on
4 circumstantial evidence, like this one, is actually harder for a
5 jury and demands additional attention.

6 When we're talking about direct evidence, when a
7 witness testifies and says, I saw that it was raining outside,
8 the only question you, as jurors, really have to ask yourself
9 is, if the question at issue is was it raining, the only
10 question you have to ask yourself is, Do I believe this witness?
11 Do I think they're telling the truth about the question of
12 whether it was raining or not?

13 When we're talking about circumstantial evidence, you
14 have additional questions you have to ask. It's not only, do I
15 believe this witness, but then the next step is, do I believe
16 the conclusions that this witness has drawn from the facts this
17 witness testified to. It's another step. It's another layer.
18 And that makes your job extra difficult.

19 And this case will not disappoint in those areas where
20 you have to be critical and ask very critical questions. When
21 an officer testifies on this stand that he saw something, ask
22 yourself: Is that possible that at the speed at which this
23 officer claims he was running, from the distance this officer
24 says he was, in the lighting conditions that were present on the
25 night in question, is that possible?

1 When an officer takes the stand and testifies that he
2 had no choice but to collect evidence in this case in a manner
3 that destroys the opportunity to collect fingerprint evidence or
4 other scientific evidence from this piece of evidence -- he's
5 going to say, I had no choice but to do it that way -- ask
6 yourself, is that true? Or did this officer just choose to
7 collect evidence in a way that would destroy the chance to get
8 unbiased evidence?

9 When a witness is called to come in and take this
10 stand and tell you that he never recovers fingerprints from
11 firearms, ask yourself why. Why? Be demanding.

12 And while I am being extra critical of the Government,
13 it's not because that's the kind of guy that I am, it's because
14 that's the law.

15 The Government has the burden in this case. It means,
16 it's their job to prove their case. Every bit of responsibility
17 falls on this table. So, if there is any evidence that you
18 thought you should have seen, thought you should have been
19 shown, if there are questions you have, issues that you have,
20 anything at all that you thought you should have heard, the
21 responsibility falls on this table.

22 In this country, we can sit silent and say nothing at
23 all, because it's their job. And I trust that, throughout the
24 course of this case, you will hold them to their burden. You
25 will make them prove to you not a story, not maybe, but you will

1 make them prove to you that they have the facts to prove guilt
2 beyond a reasonable doubt.

3 And I submit to you that, when you do that, when you
4 hold them to their burden, when you do the job you just took an
5 oath to do, you will find that the only conclusion that is
6 supported by the law, the only verdict that is supported by the
7 law is a verdict of not guilty.

8 Thank you.

9 THE COURT: Thank you, Mr. Hurson.

10 First Government witness, Mr. Fuchs.

11 MR. FUCHS: Your Honor, the Government calls
12 Mr. Patrick Huter.

13 THE COURT: Thank you, Mr. Thompson.

14 DEPUTY CLERK: You're welcome.

15 Please raise your right hand.

16 PATRICK HUTER, GOVERNMENT WITNESS, DULY SWORN

17 DEPUTY CLERK: Please be seated.

18 Sir, if you would, I need you to first adjust that
19 microphone to yourself. State your name and then spell your
20 name for the record.

21 THE WITNESS: Patrick Huter; P-A-T-R-I-C-K, H-U-T-E-R.

22 DEPUTY CLERK: Thank you.

23 Counsel?

24 MR. FUCHS: Thank you, sir.

25

1 DIRECT EXAMINATION

2 BY MR. FUCHS:

3 Q Officer Huter, who do you work for?

4 A Baltimore City Police Department.

5 Q What is your assignment?

6 A I work in the Southwest District Operations Unit.

7 Q And how long have you been a police officer?

8 A Five years.

9 Q Were you working on July 6 of 2009?

10 A Yes.

11 Q Do you remember, what shift were you working that day?

12 A 6:00 p.m. to 2:00 a.m.

13 Q Were you in uniform that night?

14 A No. I was in plain clothes.

15 Q Were you in a car?

16 A Yes, an unmarked vehicle.

17 Q Was anyone in the car with you?

18 A Yes, sir.

19 Q Who was that?

20 A Officer Fabien Laronde.

21 Q And who was driving?

22 A Officer Laronde.

23 Q So were you in the front-passenger seat?

24 A Yes, sir.

25 Q What area of the city were you patrolling that day?

1 A The 835 post, around the 2700 block of Wilkens Avenue.

2 Q Officer Huter, I'm going to show you what has been marked
3 as Government's Exhibit Number 1. And, sir --

4 MR. FUCHS: Mr. Clerk, how do I zoom out?

5 THE COURT: There is a button right there on the side
6 there, Mr. Fuchs, if you'll --

7 DEPUTY CLERK: See that white wheel?

8 MR. FUCHS: Yes. Thank you, sir.

9 BY MR. FUCHS:

10 Q Officer Huter, do you recognize that?

11 A Yes, sir.

12 Q What is it?

13 A The 2700 block of Wilkens Avenue.

14 Q If you will, will you orient the jury to what we're looking
15 at? What are the streets that are here?

16 A You see the 600 block of Brunswick, the 900 block of
17 Brunswick, and the 2700 block of Wilkens.

18 Q Officer, if you touch the screen, it makes a line on the --

19 A The 600 block of Brunswick, the 900 block of Brunswick, and
20 this is the 2700 block of Wilkens Avenue.

21 Q Okay. Apparently, if you touch the corner --

22 A The right?

23 Q The lower-right, right there, just press it and it will go
24 off.

25 THE COURT: Over to the left side.

1 MR. FUCHS: All right. Thank you.

2 BY MR. FUCHS:

3 Q Did you encounter anyone that night?

4 A Yes, sir.

5 Q Who did you encounter?

6 A The defendant, sitting -- the blue tie on.

7 Q Did you come to learn --

8 THE COURT: Let the record indicate the witness has
9 identified the defendant, Lewis Lucas.

10 THE WITNESS: Yes, Lewis Lucas.

11 BY MR. FUCHS:

12 Q Prior to July 6 of 2009, had you ever met Mr. Lucas?

13 A No, sir.

14 Q Had you ever encountered him at all?

15 A No, sir.

16 Q What time did you encounter Mr. Lucas?

17 A Roughly around 2:00 a.m.

18 Q Okay. That's the morning of July 6; is that right?

19 A Yes, sir.

20 Q If you would, using the map -- and, again, apparently your
21 finger can draw a line there -- can you describe the route you
22 took eventually leading up to your encounter with Mr. Lucas?

23 A Yes, sir.

24 We came down the 600 block of Brunswick Street and
25 made a right onto the 2700 block of Wilkens Avenue.

1 Q Okay. What happened next?

2 A Approximately -- or about right here, is when we noticed
3 Mr. Lucas standing on the porch of one of these dwellings.

4 Q And who saw him first?

5 A Officer Laronde.

6 Q Okay. Did you subsequently see him after Officer Laronde
7 pointed him out?

8 A Yes.

9 Q Okay. Go ahead.

10 A We're in the area looking for a shooting suspect, and that
11 suspect matched the description of Mr. Lucas. So we continued
12 down the 2700 block of Wilkens -- there's a median in the
13 middle -- to make a U-turn, and came back up to about right
14 here.

15 Q Did you stop right in front of that row house where you saw
16 Mr. Lucas?

17 A Yes, sir.

18 Q And where was Mr. Lucas when you pulled to the curb?

19 A On the porch of the dwelling.

20 Q Okay. And what was he doing?

21 A He was standing on the porch of the dwelling.

22 Q Did you get out of the car?

23 A Yes, sir.

24 Q Okay. At that point how far away were you from Mr. Lucas?

25 A Ten feet.

1 Q What happened next?

2 A At that time I exited the vehicle. Officer Laronde stayed
3 in the car. I stepped onto the sidewalk, asked him if he could
4 come over to speak to me in reference to a -- identifying him,
5 as he was matching the suspect information.

6 Q Okay. Were you identifiable as a police officer at this
7 point?

8 A Yes, sir. I was wearing a badge on my right hip, along
9 with a gun vest on the outside.

10 Q When you say "vest," what do you mean?

11 A A bulletproof vest.

12 Q Okay. And after you spoke to Mr. Lucas and asked if you
13 could speak to him, what happened next?

14 A After I asked to speak to him, he slowly started coming
15 towards me, and he just kept saying, Who? Me? Who? Me?

16 Q Okay.

17 A And just very timid about coming over to where I was.

18 Q Okay. What did you do?

19 A I asked him, again said, please, can I speak to you? He
20 again kind of came towards me and kept adjusting his waistband
21 with his right hand.

22 Q Okay. Do you have training in the identification of armed
23 people?

24 A Yes, sir.

25 Q Where did you get that training?

1 A Through various classes and also through the academy,
2 street training.

3 Q And what is that training? What are some of the
4 characteristics of an armed person?

5 A A lot of times they'll typically, either without knowledge
6 or when they're about to flee, adjust the gun in their
7 waistband, or wherever it is, to secure it, make sure it's still
8 there, secure it, if they're about to flee.

9 Q Is that sort of the equivalent, if I check my wallet or my
10 cell phone?

11 A Yes.

12 Q Unconsciously?

13 A Yeah, it's unconscious. It's just something that you just
14 kind of do.

15 Q Did you see Mr. Lucas do that that morning?

16 A Yes, sir.

17 Q What conclusions did you draw from that?

18 A That he might be an armed individual.

19 Q Okay. And then what happened next?

20 A I took a step closer to him to close the distance between
21 us so we could speak. At that time he turned and ran.

22 Q Prior to him turning and running, did you put your hands on
23 him?

24 A No.

25 Q Grab him?

1 A No.

2 Q Had you pulled your weapon out?

3 A No.

4 Q Okay. And at that point, he turned and ran. Where did he
5 run?

6 A He ran up through here, down the 2700 block of Wilkens.
7 There's a lot right here. He cut through the lot of the 27 --
8 2700 block of Wilkens going to the 900 block of Brunswick
9 Street.

10 Q Okay. And where did he go from there?

11 A At that time he went down the 900 block of Brunswick Street
12 and down here where it dead ends -- or where the dwellings end.
13 There is a small cut in between a fence and the dwellings.

14 Q Let me stop you there. Did you follow Mr. Lucas when he
15 turned and ran?

16 A Yes, sir.

17 Q How far behind him were you?

18 A Approximately 10 feet.

19 Q Okay. And were there streetlights on?

20 A Yes, sir.

21 Q Could you see him clearly?

22 A Yes, sir. There's streetlights. It's a fairly well lit
23 area.

24 Q Okay. Did you also have a flashlight with you?

25 A Yes, sir.

1 Q Was it in your hand?

2 A Yes, sir.

3 Q Was it turned on?

4 A Yes, sir.

5 Q And so you could see Mr. Lucas clearly; is that correct?

6 A Yes, sir.

7 Q And did you ever lose sight of him as you chased him down
8 the street?

9 A No, sir.

10 Q Where was Officer Laronde while you were chasing him?

11 A He was in the vehicle, and he paralleled me the whole time
12 that we were -- that I was chasing him on foot.

13 Q Now, as Mr. Lucas was running, you could see him in front
14 of you; is that correct?

15 A That's correct.

16 Q Could you see anything about the way he was running?

17 A Yes, sir. As we were running down the 900 block of
18 Brunswick, you could see -- as you're running, both of your
19 arms, one of -- his right arm kept going to his waistband as if
20 he was adjusting or making sure something didn't pop out or --

21 Q Now, to be clear, you didn't see a gun at this point?

22 A No, sir.

23 Q But you saw him reach as if he was securing something?

24 A Yes, sir.

25 Q Officer Huter, I'm going to show you a series of pictures,

1 and I'd like you to identify them for the jury.

2 Sir, if you would, hit the upper -- thank you.

3 I'm going to show you what has been marked as
4 Government's Exhibit 2. Do you recognize that?

5 A Yes, sir.

6 Q What's that?

7 A The front porch in which he was standing.

8 Q If you would, just point -- I'm sorry. I cut you off. If
9 you would, just point on there where Mr. Lucas was standing.

10 A Somewhere around here.

11 Q And was your position basically where the cameraman was
12 standing?

13 A Yes, sir.

14 Q I show you what's been marked as Government's Exhibit
15 Number 3. Do you recognize that?

16 A Yes, sir.

17 Q And what is that?

18 A That's looking down the 2700 block of Wilkens towards the
19 900 block of Brunswick.

20 Q That's looking east on Wilkens; is that correct?

21 A Yes, sir.

22 Q And is that the direction that Mr. Lucas ran in when he
23 fled from you?

24 A Yes, sir.

25 Q Can you point on that picture just the approximate route

1 that Mr. Lucas took?

2 A Ran down, cut across, and back through this lot.

3 Q And did you follow him directly behind him in that route?

4 A Yes, sir.

5 Q Okay. I show you what's been marked as Government's
6 Exhibit Number 4. Do you recognize that?

7 A Yes, sir.

8 Q And what is that?

9 A The lot leading from the 2700 block over to the 900 block
10 of Brunswick Street.

11 Q And, again, if you would, just show Mr. Lucas' route on
12 that picture.

13 A (Indicating.)

14 Q And, again, were you following directly behind?

15 A Yes, sir.

16 Q Did you maintain that 10-foot distance --

17 A Yes, sir.

18 Q -- during that time?

19 I show you Government's Exhibit Number 5. Do you
20 recognize that?

21 A Yes, sir.

22 Q And what is that?

23 A That's looking down the 900 block of Brunswick Street.

24 Q That's -- going south on Brunswick; is that correct?

25 A Yes.

1 Q Okay. And, if you would, can you show Mr. Lucas' route?

2 A Coming off that lot and then onto the sidewalk going down
3 900.

4 Q And, again -- I'm sorry, I keep asking the same question --
5 did you follow that same route?

6 A Yes, sir.

7 Q You were directly behind him?

8 A Yes, sir.

9 Q And were there streetlights also on Brunswick?

10 A Yes, sir. There is one right there.

11 Q And was the area well illuminated?

12 A Yes, sir.

13 Q Could you see Mr. Lucas clearly in front of you?

14 A Yes, sir.

15 Q I show you Government's Exhibit Number 6. Do you recognize
16 that?

17 A Yes, sir.

18 Q And what's that?

19 A That's looking down the -- the cut in between the house and
20 the fence, and looking from the 900 block of Brunswick.

21 Q And is that the alleyway that Mr. Lucas ran down?

22 A Yes, sir.

23 Q So that's immediately adjacent to Brunswick; is that
24 correct?

25 A Correct, sir.

1 Q Did you follow him down that alleyway?

2 A Yes, sir.

3 Q If you would, just describe how that alleyway is laid out.

4 A As you can see, it's a very tight space, lots of shrubbery.
5 There's nothing between -- I mean, there's a fence on one side;
6 there's a dwelling on the other side; and, as the dwelling ends,
7 there's another fence that picks up in the people's backyard.

8 Q Okay. I'm going to show you again Government's Exhibit
9 Number 1.

10 Obviously, that alleyway is difficult to see, but
11 could you just trace where it is on that map?

12 A Right there.

13 Q And does it -- that second mark you made, does that reflect
14 a right-hand turn in the alleyway?

15 A Yes. When you go down the first alleyway that you cut
16 down, it dead ends into a fence where there's a Ryder truck
17 parking lot back here, and it dead ends, and you have to make a
18 right.

19 Q I show you another picture. This is Government's Exhibit
20 Number 7. Do you recognize that?

21 A Yes, sir.

22 Q And what is that?

23 A That is the alleyway looking at the 900 block of Brunswick
24 from the corner.

25 Q Okay. Is the cameraman roughly in the position where the

1 alleyway turns?

2 A Yes, sir.

3 Q Okay. Sir, as you ran down that alleyway, could you still
4 see Mr. Lucas in front of you?

5 A Yes, sir.

6 Q Okay. Were there streetlights in the alleyway?

7 A There's not streetlights in the alleyway, but there are
8 lights in the adjacent parking lot to the Ryder Truck Company.

9 Q Let me show you Government's Exhibit Number 1.

10 A You can actually see the reflection of one of them here,
11 here, here.

12 Q Okay. And did that light spill into the alleyway?

13 A Yes.

14 Q And did you still have your flashlight with you?

15 A Yes, sir.

16 Q Was your flashlight still out?

17 A Yes.

18 Q And it's on. Okay. And were you shining it in front of
19 you?

20 A Yes, sir.

21 Q And at this point, as you run up the alleyway after
22 Mr. Lucas, how far behind Mr. Lucas are you?

23 A Again, about 10 feet.

24 Q Okay. Could you see him clearly in front of you?

25 A Yes, sir.

1 Q Okay. Did you see him do anything as he ran up that
2 alleyway?

3 A Yes, sir. As he was running up that alleyway, again, he
4 was still adjusting, with the right hand, the waistband. When
5 he got to the corner -- right there -- when he got to the
6 corner, I saw him reach with his right hand and throw a black
7 object across his body.

8 Q If you would, if the Court doesn't mind, could you just
9 stand up and show us what you saw?

10 THE COURT: Yes, you may stand up. Go ahead.

11 THE WITNESS: As he was running, the alley makes a
12 right-hand turn, you could see him throw something across his
13 body over to the corner.

14 BY MR. FUCHS:

15 Q And to be clear, you only see Mr. Lucas from the rear; is
16 that correct?

17 A Yes.

18 Q But you see his hand come out and throw something; is that
19 correct?

20 A Yes, sir.

21 Q Could you see what was in his hand?

22 A No. It was just a black object, resembled a handgun, but I
23 couldn't --

24 Q You couldn't see the object itself exactly clear; is that
25 correct?

1 A Correct.

2 Q Okay. Did you draw some conclusions, though, based on its
3 size and shape, though?

4 A Based on just the way -- the earlier characteristics, plus
5 the size and shape, I concluded it to be a handgun.

6 Q Okay. Did you see where it hit the ground?

7 A Yes.

8 Q And where was that?

9 A It was in the corner of where the alley turns at a
10 90-degree angle.

11 Q Let me show you one more last picture. This is
12 Government's Exhibit Number 8. Do you recognize that?

13 A Yes, sir.

14 Q And what is that?

15 A That is the corner of the alley. This is where the 900
16 block of Brunswick would come up, and this is where the alley
17 turns back down to go to Wilkens.

18 Q Okay. And is this where you saw the gun land?

19 A Yes, sir.

20 Q And just approximately where did you see the gun land?

21 A Roughly in that area, sir.

22 Q Now, in fairness, the picture that's portrayed here was
23 obviously taken during the daytime; is that correct?

24 A Correct, sir.

25 Q So this obviously happened early morning, it was dark out;

1 correct?

2 A Yes.

3 Q Does the picture exactly resemble the way that alleyway
4 looked when you were there on July 6?

5 A No, sir.

6 Q What's different about it?

7 A Some -- one of the citizens cleaned it up, and it was
8 fairly overgrown with shrubbery, garbage, glass, debris.

9 Q So it was more overgrown at that time?

10 A Correct, sir.

11 Q All right. But you saw approximately where you saw that
12 black, dark object land; is that correct?

13 A Yes, sir.

14 Q Okay. And I don't mean to put words in your mouth. The
15 object that you saw, was it dark -- dark in color?

16 A Yes.

17 Q Did you hear it hit the ground?

18 A Yes, sir.

19 Q What did it sound like?

20 A It sounded like a heavy object, like it had some weight to
21 it.

22 Q Okay. Now, did you stop and pick it up?

23 A No, sir.

24 Q What did you do?

25 A I continued chasing Mr. Lucas.

1 Q And did you catch up to him at some point?

2 A Yes, sir.

3 Q Where was that?

4 A Approximately 10, 15 feet further up the alley.

5 Q I'm going to show you again Government's Exhibit Number 1.
6 Show us roughly where you apprehended Mr. Lucas.

7 A Right around there, sir.

8 Q Okay. And that was, you said, approximately 10 to 15 feet
9 from that turn in the alleyway?

10 A Yes, sir.

11 Q How did you apprehend Mr. Lucas?

12 A I tackled him.

13 Q Did he go to the ground?

14 A Yes, sir.

15 Q What happened next?

16 A After we went to the ground, we began to fight and
17 struggle, to apprehend him.

18 Q What happened?

19 A I finally was able to get his back and apprehend him and
20 handcuff him.

21 Q How long did that take?

22 A A couple minutes.

23 Q Okay. Once you got him in handcuffs, did he stop
24 resisting?

25 A Yes, sir.

1 Q And at some point, did Officer Laronde arrive on the scene?

2 A Yes, sir.

3 Q How long after you apprehended Mr. Lucas was that?

4 A Approximately two minutes, a couple minutes.

5 Q Okay. And where were you when he arrived on the scene?

6 A I was still over with Mr. Lucas.

7 Q Were you in the same place as where you had tackled him to

8 the ground?

9 A Yes, sir.

10 Q And at that point Mr. Lucas was in handcuffs?

11 A Yes, sir.

12 Q Was he on the ground, or was he standing up?

13 A He was on the ground.

14 Q Okay. And when Officer Laronde arrived on the scene, what

15 did you say?

16 A I told him that I thought he threw a handgun. I had my

17 flashlight. I picked it up and shined it where I thought he

18 threw a handgun, and he walked over and picked up a black

19 handgun.

20 Q Okay. Let me show you what's been marked as Government's

21 Exhibit Number 9.

22 MR. FUCHS: Permission to approach, Your Honor.

23 THE COURT: Yes, sir.

24 BY MR. FUCHS:

25 Q Officer Huter, what is that?

1 A That is the black handgun that was recovered that night.

2 Q How do you know it's the same gun?

3 A I remember it from sight and also the corresponding

4 complaint number from the case.

5 Q Now, when Officer Laronde picked it up, did it look like

6 what you had seen discarded from Mr. Lucas as he ran?

7 A Yes, sir.

8 Q And did you conclude that that was the same gun?

9 A Yes, sir.

10 Q Okay. Let me take that back from you.

11 At some point was Mr. Lucas transported from the

12 scene?

13 A Yes, sir.

14 Q Where did he go?

15 A To the Southwest District.

16 Q Did you transport him?

17 A No, sir.

18 Q Okay. In fact, did you see him again after he left the

19 scene?

20 A No, sir.

21 Q Where did you go after Mr. Lucas left the scene?

22 A After that I went back to the Southwest District.

23 Q And did you write any reports in connection with this

24 arrest?

25 A Yes, sir.

1 Q Did you write the statement of probable cause?

2 A Yes, sir.

3 MR. FUCHS: Permission to approach again, Your Honor.

4 THE COURT: Yes, sir.

5 BY MR. FUCHS:

6 Q Sir, I'm going to show you what has been marked for
7 identification only as Government's Exhibit 10. Do you
8 recognize that?

9 A Yes, sir.

10 Q And what is that?

11 A It is the booking statement for probable cause.

12 Q Okay. Is that the statement of probable cause you wrote
13 that night?

14 A Yes, sir.

15 Q And, again, I don't mean to put words in your mouth. When
16 did you write that statement of probable cause?

17 A It says 4:19 a.m.

18 Q And what you're looking at is what?

19 A Is the top-right corner where it's time-stamped for closing
20 out of the document.

21 Q Is that the timestamp that's provided by your computer
22 system?

23 A Yes, sir.

24 Q So that is the time that you, basically, returned and
25 submitted the report into the system?

1 A Yes, sir.

2 Q Okay. Now, in the body of the report, did you write when
3 this arrest took place?

4 A Yes, sir.

5 Q What did you write?

6 A July 7, 2009, at approximately 1:55.

7 Q Now, is that correct?

8 A No.

9 Q What's wrong with it?

10 A It says July 7th instead of July 6th.

11 Q Why did you write the 7th?

12 A It's a typo.

13 Q It's simply a mistake?

14 A Yeah, it's a mistake.

15 Q Okay. Is everything else in the statement of probable
16 cause accurate?

17 A Yes, sir.

18 Q And, as you sit here today, do you remember the arrest of
19 Mr. Lucas on the 6th of July?

20 A Yes. Just the time changing of going right into midnight
21 just -- I just got done fighting with him. It's a typo.

22 Q I understand. Thank you very much.

23 MR. FUCHS: No further questions, Your Honor.

24 THE COURT: Thank you, Mr. Fuchs.

25 Ms. Newberger?

1 MS. NEWBERGER: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. NEWBERGER:

4 Q Good afternoon, Officer Huter.

5 A Good afternoon, ma'am.

6 Q If you will bear with me, I'm not as technologically savvy
7 as Mr. Fuchs.

8 MS. NEWBERGER: Actually, could you flip it?

9 MR. HURSON: You want it up?

10 MS. NEWBERGER: Yeah.

11 BY MS. NEWBERGER:

12 Q I'm going to show you, and if you can't see it, if you want
13 to just walk around so you can see it, what's been previously
14 marked as Defendant's Exhibit 1.

15 Do you recognize the area depicted in that?

16 A Yes, ma'am.

17 Q Can you please describe for us what it is?

18 A That's the 2700 block of Wilkens. Actually, it's pretty
19 much the whole 835 post.

20 Q And can you just show the jury which is Wilkens Avenue?

21 A It's this long strip.

22 Q And is Brunswick also on that map?

23 A Yes, ma'am.

24 Q Can you point that out as well?

25 A (Indicating.)

1 Q All right. And where -- can you also point out the Ryder
2 lot that you referred to that was in the other photograph?

3 A (Indicating.)

4 Q Okay. And that is next to the alleyway that you described
5 previously?

6 A Correct.

7 Q And then can you also show us on that photograph where the
8 Southwestern District is located?

9 A Right here. Right there.

10 Q Okay. Thank you.

11 Now, what kind of neighborhood is this in terms --
12 from -- is it a neighborhood that's high in crime?

13 A You're looking at a pretty widespread area.

14 Q The intersection of Wilkens and Brunswick?

15 A Yes, ma'am.

16 Q And you can take a seat. Thank you.

17 And is it also fair to characterize it as an open-air
18 drug market?

19 A Yes, ma'am.

20 Q And so what that means is that there are lots of reports of
21 crime in the vicinity of the Brunswick-Wilkens intersection;
22 correct?

23 A Not just reports. I mean, actual arrests and --

24 Q Okay. And so that includes drug offenses, assaults,
25 thefts, burglaries -- a variety of type of crimes?

1 A Yes, ma'am.

2 Q And, in fact, it even includes shootings; correct?

3 A Yes, ma'am.

4 Q In fact, a few days before July 6, when this incident
5 occurred, there had been a shooting on the 500 block of
6 Brunswick; correct?

7 A Yes, ma'am.

8 Q And I apologize. Can I ask you to get down one more time
9 and show the jury where the 500 block of Brunswick is in
10 relation to Brunswick Avenue?

11 A (Indicating.)

12 Q Okay. Thank you.

13 And when you refer to something -- when the police
14 refer to something as a open-air drug market, that means that
15 there are people who sell drugs on street corners; correct?

16 A Correct, ma'am.

17 Q And are you familiar with the term "stash house"?

18 A Yes, ma'am.

19 Q And a stash house is a place where people who sell drugs
20 keep their supply that they intend to sell; is that correct?

21 A Yes, ma'am.

22 Q And would it be fair to say that this is a neighborhood in
23 which there are stash houses?

24 A I can't say that for sure.

25 Q Can you say that it is often the case that people who are

1 selling drugs do not keep the drugs on their person?

2 A Correct.

3 Q And they often keep it in some type of hiding place that's
4 easily accessible?

5 A Correct.

6 Q So that could be a house; correct?

7 A Or an alley; yes, ma'am.

8 Q An alleyway. Okay. A front stoop?

9 A Anywhere that it's not on them.

10 Q Okay. And is it also an unfortunate reality that people
11 who are selling drugs sometimes also have guns as well?

12 A Yes, ma'am.

13 Q And that sometimes those guns are also kept near the
14 stash -- where the stash is located?

15 A Sometimes. Not -- I don't come across that that often, but
16 sometimes.

17 Q Sometimes?

18 A I imagine it does happen.

19 Q Okay. And this is the type of neighborhood that we're
20 talking about; correct?

21 A Where, yes, we've made many CDS lockups in that area.

22 Q All right. And if I may, I'm going to show you -- and I
23 apologize. There is some duplication here between the
24 Government and Defense Exhibits. I'm going to show you what
25 I've previously marked as Defendant's Exhibit Number 2.

1 Do you recognize this?

2 A Yes, ma'am.

3 Q Is this the intersection of Brunswick and Wilkens that
4 we've been discussing?

5 A Yes, ma'am.

6 Q Now, this is a neighborhood that's both commercial and
7 residential; correct?

8 A Correct, ma'am.

9 Q There's -- these are row houses, residential properties?

10 A Yes, ma'am.

11 Q As are these right here?

12 A Yes, ma'am.

13 Q This is a business?

14 A I believe so; yes, ma'am.

15 Q And then this -- the Ryder lot is a commercial --

16 A Yes, ma'am.

17 Q -- location as well?

18 All right. And these row houses are packed tightly
19 together; correct?

20 A Yes, ma'am. There is not much space between them.

21 Q All right. So this is a neighborhood where most of those
22 row houses are occupied?

23 A Correct.

24 Q This is not an area of abandoned property?

25 A No.

1 Q And it's a racially-diverse neighborhood?

2 A Yes, ma'am.

3 Q Okay. Now, I want to just go through some of these
4 photographs again. I think there is some duplication again.
5 This has been previously marked as Defendant's Exhibit 3.

6 And you said that this fairly and accurately depicts
7 the entranceway to the cut-through that you mentioned to the
8 alley?

9 A Yes, ma'am.

10 Q And so I just want to make sure that we're all in
11 agreement. This here is the dwelling that you were describing?

12 A Which dwelling?

13 Q Bordering the pathway?

14 A Yes, ma'am.

15 Q And this fence, does this fence divide the alleyway from
16 the Ryder lot?

17 A Yes, ma'am.

18 Q Okay.

19 A Or from that property.

20 Q I show you -- I believe this one is Government's Exhibit --

21 MS. NEWBERGER: Do you recall?

22 MR. FUCHS: Eight.

23 MS. NEWBERGER: Eight? Okay. I'm sorry. I think
24 it's Government's 7.

25 MR. FUCHS: You're right.

1 BY MS. NEWBERGER:

2 Q Government's Exhibit 7, and is this, again, the view
3 towards Brunswick down that pathway?

4 A Yes, ma'am.

5 Q Okay. That's a very tight alleyway; correct?

6 A Yes, ma'am.

7 Q And when Mr. Fuchs showed you a different picture, you
8 mentioned that, at the time this incident occurred, there was
9 actually more shrubbery, more trash, more glass than in the
10 photograph. Is that correct about this one as well?

11 A Correct, ma'am.

12 Q Okay. So at the time this happened it was more overgrown?

13 A More than in the picture; yes, ma'am.

14 Q In the picture, right.

15 I'm going to show you what's been previously marked as
16 Defendant's Exhibit Number 4.

17 Now, is this right what you see when you make that
18 90-degree turn --

19 A Correct.

20 Q -- from the pathway?

21 A Yes, ma'am.

22 Q So there is a utility pole here; correct?

23 A Correct, ma'am.

24 Q That utility pole does not have a light on it, does it?

25 A I do not recall.

1 Q Okay. And there is a shed on the second lot; is that
2 correct?

3 A Yes, ma'am.

4 Q All right. And this alleyway is sandwiched between the
5 Ryder lot on one side and residential properties and backyards
6 on the other; is that correct?

7 A Correct, ma'am.

8 Q And does the same go for this photograph as the other one,
9 which is that at the time of this incident there was more
10 debris, more shrubbery, more trash?

11 A Yes, ma'am.

12 Q I show you what's been marked previously as Defendant's
13 Exhibit 5. And just so that we can all see, is that -- does
14 that depict the 90-degree angle there, the turn?

15 A Yes, ma'am.

16 Q Okay. And so, if you're running, you would come this way
17 and then make a sharp turn?

18 A Yes, ma'am.

19 Q All right. I'm going to show you what has been previously
20 marked as Defendant's Exhibit Number 6. Is this further down
21 the alley that you described?

22 A Yes, ma'am. It's further down than two pictures ago.

23 Q And is this approximately the area where you arrested
24 Mr. Lucas?

25 A Yeah, approximate.

1 Q But, again, the same for this picture as the other picture,
2 at the time of this incident, there was more shrubbery, more
3 trash, more glass?

4 A Yes, ma'am.

5 Q I show you now what has been previously marked as
6 Defendant's Exhibit 7. Do you recognize that photograph?

7 A No. I imagine you're looking from --

8 Q The alleyway?

9 A -- the Ryder lot up at the alleyway.

10 Q And so from this photograph, we can see slightly that
11 utility pole, correct?

12 A Correct, ma'am.

13 Q And it just looks like it has electrical -- electrical
14 wires?

15 A Yes, ma'am. I see electrical wires.

16 Q And you previously testified that there was no direct
17 streetlight into that alleyway; correct?

18 A Yes. There is no direct streetlight into the alleyway.

19 Q Okay. I'm going to show you what has been previously
20 marked as Defendant's Exhibit 8. Is that also a photograph
21 taken from the Ryder lot up to the alleyway?

22 A Yes, ma'am.

23 Q Okay. And so along that whole division, between the Ryder
24 lot and the alleyway, there's a fence; correct?

25 A Correct, ma'am.

1 Q And you pointed out on the photograph that Mr. Fuchs -- or
2 the map, the area I believe that Mr. Fuchs had shown you street
3 lamps. Does this depict one of the types of street lamps that's
4 on the Ryder lot?

5 A Yes, ma'am.

6 Q And so the lamp is clearly facing towards the Ryder lot and
7 away from the alley; is that correct?

8 A Yes, ma'am.

9 Q All right. Now, it goes without saying, all those photos
10 appear to have been taken in daylight; correct?

11 A Correct.

12 Q But this incident occurred approximately 2:00 a.m.?

13 A Correct, ma'am.

14 Q So it was dark out?

15 A Yes, ma'am.

16 Q Now, you had previously mentioned that, when you started
17 that shift -- so I guess it would have been at 6 p.m. on
18 July 5th?

19 A Correct, ma'am.

20 Q And your shift was to end at 2:00 a.m. July 6?

21 A Yes, ma'am.

22 Q That night you were on the lookout for a suspect in a
23 shooting; correct?

24 A Correct, ma'am.

25 Q And just so that we're all clear, is the defendant, Lewis

1 Lucas, the person you were looking for that night?

2 A No, ma'am.

3 Q Okay. He is not and was not the suspect of the shooting
4 that we're discussing?

5 A No, ma'am.

6 Q Okay. But at the time that this all began, did you know
7 his name was Lucas?

8 A No, ma'am.

9 Q Okay. And you had previously testified you had never seen
10 him before; correct?

11 A Never had any --

12 Q All right. Now, you knew what the suspect you were looking
13 for looked like; correct?

14 A I had a picture of the suspect.

15 Q You had a picture of the suspect. And that is -- was
16 distributed at the police station?

17 A Yes, ma'am.

18 Q On a lookout sheet?

19 A Yes, ma'am.

20 Q And it was pretty high priority to arrest the suspect;
21 isn't that correct?

22 A All shooting cases are; yes, ma'am.

23 Q Are high priority?

24 A Yes, ma'am.

25 Q Okay. And did the lookout sheet -- lookout sheets also

1 generally contain other descriptive information; correct -- like
2 the date of birth of the individual?

3 A Yes, ma'am.

4 Q The height?

5 A Yes, ma'am.

6 Q Weight?

7 A Approximate height, yes.

8 Q Approximate height, approximate weight. The best
9 information available to the police department at the time that
10 they create the lookout sheet; correct?

11 A Correct, ma'am.

12 Q Do you recall what was the date of birth, height and weight
13 of the person that you were looking for?

14 A No, ma'am.

15 Q Would the lookout sheet refresh your recollection?

16 A Yes, ma'am.

17 Q Okay.

18 MS. NEWBERGER: If I may approach, Your Honor?

19 THE COURT: Yes, certainly.

20 BY MS. NEWBERGER:

21 Q I'm going to show you what's been previously marked for
22 identification only as Defendant's Exhibit Number 9. Does that
23 refresh your recollection?

24 A Yes, ma'am.

25 Q What is the date of birth of the person you were looking

1 for that night?

2 A 4-19-92.

3 Q So he was 17 years old, 18 years old at the time?

4 A Yes, ma'am.

5 Q And what was the height?

6 A Approximately 5-6.

7 Q And the weight?

8 A One hundred forty pounds.

9 Q Okay. Thank you.

10 Now, you approached Mr. Lucas that night because you
11 thought he might be the suspect you just described; correct?

12 A Yes, ma'am.

13 Q Okay. And that was based on his appearance?

14 A Yes, ma'am.

15 Q All right. You were looking for someone who had
16 dreadlocks?

17 A Yes, ma'am.

18 Q But someone who has a different name than Lewis Lucas?

19 A Correct; yes, ma'am.

20 Q Okay. Just wanted to be clear about that.

21 But you went off -- and you said Officer Laronde was
22 the first person to see Mr. Lucas, the person you thought might
23 be the suspect; correct?

24 A Yes, ma'am.

25 Q And you didn't actually learn the identity of Mr. Lucas

1 until after you had arrested him; correct?

2 A Correct, ma'am.

3 Q So you and Officer Laronde were mistaken about Mr. Lucas;
4 he was not in fact the suspect you were looking for?

5 A Correct, ma'am.

6 Q And, indeed, Mr. Lucas is taller than 5-6; is he not?

7 A I guess. I can't -- he's sitting down.

8 Q He looks like he weighs more than 140 pounds; doesn't he?

9 A Yes, ma'am.

10 Q And he also looks like he is older than 18 years old?

11 A Again, we saw him from across the street at night.

12 Q Okay.

13 A I didn't know --

14 Q So it wasn't the best conditions to make a identification?

15 A No, ma'am.

16 Q Now, you testified earlier about how you wrote the report
17 in this case; correct?

18 A Yes, ma'am.

19 Q And you also wrote the statement of probable cause?

20 A Correct, ma'am.

21 Q And we discussed that the statement of probable cause said
22 that this all occurred on July 7th.

23 A Yes, ma'am.

24 Q And that was a mistake.

25 A Yes, ma'am.

1 Q Okay. You also wrote a police report in this case; did you
2 not?

3 A Correct, ma'am.

4 MS. NEWBERGER: Can I approach the witness, Your
5 Honor?

6 THE COURT: Yes, certainly.

7 BY MS. NEWBERGER:

8 Q I'm going to show you what has been previously marked for
9 identification purposes only as Defendant's Exhibit 10. Now, is
10 this the report that you wrote?

11 A Yes, ma'am.

12 Q Okay. And can you turn to the second page.

13 At the bottom of that page, have you signed?

14 A Yes, ma'am.

15 Q And right above your signature, does it say, "I affirm and
16 declare that the statements above are true to the best of my
17 knowledge"?

18 A Yes, ma'am.

19 Q Okay. Now, what date is reflected on the first page for
20 date and time occurred?

21 A On the first page?

22 Q On the first page.

23 A The 7th.

24 Q It's a poor copy. Does it look like it says July 6th?

25 A Yes, ma'am.

1 Q Okay. Now, in the narrative that starts on page 2, does it
2 say that this occurred on July 7, 2009, at approximately 1:55?

3 A Correct, ma'am.

4 Q And so this was a mistake as well?

5 A Correct, ma'am.

6 Q Okay. But this document you signed and affirmed that it
7 was true to the best of my knowledge?

8 A To the best of my knowledge, yes, ma'am.

9 Q But it contained a mistake?

10 A Yes, ma'am.

11 Q All right. So it's July 6; is that correct?

12 A Correct, ma'am.

13 Q And it's approximately 2:00 a.m. in the morning?

14 A Correct, ma'am.

15 Q Thank you.

16 And at the time that you and Officer Laronde turned
17 from Brunswick onto Wilkens Avenue, were you headed back to the
18 Southwestern District at the end of your shift?

19 A Correct, ma'am.

20 Q So you had been on duty at that point for eight hours?

21 A Yes, ma'am.

22 Q And you've -- have you been working for the Southwestern
23 District for the five years that you've been on the police
24 force?

25 A Yes, ma'am.

1 Q And how long have you and Officer Laronde been partners?

2 A Approximately two years.

3 Q And you and Officer Laronde serve in a plain-clothes
4 capacity?

5 A Plain clothes; yes, ma'am.

6 Q So you do not wear a uniform?

7 A No, ma'am.

8 Q And you were not wearing a uniform on July 6?

9 A No, ma'am.

10 Q And also you were driving in an unmarked vehicle?

11 A Unmarked, yes, ma'am.

12 Q And so that means it doesn't say "Baltimore City Police" on
13 it?

14 A No, ma'am.

15 MS. NEWBERGER: If I may approach again, Your Honor?

16 THE COURT: Yes, certainly.

17 BY MS. NEWBERGER:

18 Q I'm going to hand you what's been previously marked as
19 Defendant's Exhibit Number 11. Do you recognize these
20 photographs, Officer?

21 A Yes, ma'am.

22 Q Is that a photograph of yourself?

23 A Yes, ma'am.

24 Q Was that taken after the arrest of Mr. Lucas?

25 A Yes, ma'am.

1 Q Is that a fair and accurate depiction of what you were
2 wearing that evening?

3 A Yes, ma'am.

4 Q And so you were wearing -- is that a T-shirt?

5 A Correct, ma'am.

6 Q This is a black-and-white photo, but was it black and
7 white, or was that colored?

8 A Black and white .

9 Q The T-shirt is black and white?

10 A Yes.

11 Q And at the center it has a skull?

12 A Yes, ma'am.

13 Q And you were wearing, it looks like -- is that lower
14 photograph a photograph of your knees?

15 A Yes, ma'am.

16 Q And you were wearing shorts?

17 A Yes, ma'am.

18 Q Like maybe cargo shorts?

19 A I believe so, ma'am.

20 Q Okay. And you said that you had your badge on your hip?

21 A Correct, ma'am.

22 Q Okay. And you keep your gun in a holster?

23 A Correct, ma'am.

24 Q Also on your hip?

25 A Yes, ma'am.

1 Q And Officer Laronde is the one who's driving, and you're in
2 the passenger's seat?

3 A Yes, ma'am.

4 Q Now, you see -- so you're about two blocks from the police
5 station when Officer Laronde first sees the potential suspect on
6 the porch?

7 A Correct, ma'am.

8 Q And he makes a U-turn?

9 A Yes. The 2700 block of Wilkens.

10 Q Okay. How much time do you think elapsed between when
11 Officer Laronde first noticed Mr. Lucas on the porch and when
12 you got out of the vehicle?

13 A Somewhere between 15 to 30 seconds.

14 Q Before you got out of the vehicle, did you and Officer
15 Laronde make any type of plan of action?

16 A No, ma'am.

17 Q Okay. Did you discuss what you were going to do?

18 A No, ma'am.

19 Q All right. And so, when you get out of the car, you take a
20 step forward; correct?

21 A I got -- yes, I got out of the car, shut the door.

22 Q Okay. And you've got your flashlight at that point?

23 A Yes, ma'am.

24 Q And you have the flashlight on?

25 A Yes, ma'am.

1 Q All right. And you're pointing it towards the suspect;
2 correct?

3 A Yes, ma'am.

4 Q And you said you asked if you could speak with him?

5 A Yes, ma'am.

6 Q And the response was, Who? Me? Who? Me?

7 A Correct, ma'am.

8 Q And this is about 2:00 a.m. in the morning; correct?

9 A Yes, ma'am.

10 Q Now, you testified that you saw Mr. Lucas grabbing at his
11 waistband; is that accurate?

12 A Correct, ma'am.

13 Q All right. Just sort of the center of his waistband?

14 A Yes, ma'am.

15 Q You did not see a firearm, did you?

16 A No, ma'am.

17 Q And you said shortly thereafter Mr. Lucas began running?

18 A Yes, ma'am.

19 Q And you ran after him?

20 A Yes, ma'am.

21 Q Now, up until that point, at no time had Officer Laronde
22 gotten out of the car, had he?

23 A No, ma'am.

24 Q He stayed in the vehicle?

25 A Yes, ma'am.

1 Q Were you in radio contact with Officer Laronde when he
2 started running?

3 A No, ma'am.

4 Q All right. But you could see him driving?

5 A He could see me -- he could see me running. I was looking
6 at Mr. Lucas, not looking at Officer Laronde.

7 Q And you still have the flashlight in your hand?

8 A Correct, ma'am.

9 Q And you estimate that he's about 10 feet ahead of you?

10 A Yes, ma'am.

11 Q Would you -- what would you describe your speed? Would you
12 describe it as you were running your hardest to catch up with
13 him?

14 A I would say we were both running -- he was running his
15 hardest to get away from me. I was running my hardest to catch
16 him.

17 Q Okay. So this wasn't a jog?

18 A No, ma'am.

19 Q This wasn't leisurely?

20 A No, ma'am.

21 Q All right. And you're running with a flashlight in your
22 hand; right?

23 A Yes, ma'am.

24 Q Flashlight heavy?

25 A No, ma'am.

1 Q Not heavy. Not at all?

2 A No.

3 Q Do you have it raised, or is it just down by your side?

4 A I'm running with it.

5 Q It's moving however your arms are?

6 A Yes, ma'am.

7 Q Okay. So it's going up and down, up and down as you're
8 running?

9 A Yes, down the 900 block of Brunswick. When I got to the
10 alley, I was a little more cautious.

11 Q Okay. Because that's an obstacle course; isn't it, that
12 alley?

13 A Not really. It's just a 90-degree turn. I mean, there is
14 shrubbery, but we made it through.

15 Q All right. You didn't trip?

16 A No, ma'am.

17 Q You didn't fall?

18 A No, ma'am.

19 Q But you testified that you could see Mr. Lucas still
20 grabbing at his waist?

21 A Yes, ma'am.

22 Q All right. But he's ahead of you?

23 A Correct, ma'am.

24 Q And this would be 10 feet ahead of you?

25 A Correct, ma'am.

1 Q And you're both running -- by your description, he is
2 running as hard as he can to get away from you, and you're
3 running as hard as you can to catch up?

4 A Yes, ma'am.

5 Q Now, when Mr. Lucas turned down that pathway -- and I'll
6 just, so we can all be clear, show you Defendant's Exhibit
7 Number 3 again.

8 When Mr. Lucas turns down that pathway, you follow;
9 correct?

10 A Correct, ma'am.

11 Q You didn't stop for a second to say, should I go down here;
12 you just followed?

13 A Yes, ma'am.

14 Q And at that point did you lose sight of Officer Laronde?

15 A Yes, ma'am.

16 Q And were you in radio communication with him?

17 A No, ma'am.

18 Q So you're on your own at this point?

19 A Yes, ma'am.

20 Q And that alleyway, just to be clear, is far too narrow for
21 a car to get through; correct?

22 A Correct, ma'am.

23 Q That's maybe at most 3 feet?

24 A Approximately, somewhere around there. I'm not sure what
25 it is.

1 Q Exactly. But definitely too narrow for a car?

2 A Yes, ma'am.

3 Q And so you're separated from your partner; correct?

4 A Yes, ma'am.

5 Q Do you wear a radio?

6 A Yes, ma'am.

7 Q Radio at your waist?

8 A I don't know where it was that night.

9 Q All right. And there are no streetlights in this alleyway;
10 correct?

11 A Correct, ma'am.

12 Q You can't see any there.

13 Now, around that turn you testified that you saw
14 Mr. Lucas with a black object in his right hand?

15 A Yes, ma'am.

16 Q And you described the motion of throwing it to his left?

17 A Across his body; yes, ma'am.

18 Q Across his body to his left?

19 A Correct.

20 Q And you're behind him?

21 A Correct, ma'am.

22 Q At this point are you still 10 feet behind him?

23 A I was probably closing on him just because we were hitting
24 a turn. He had to slow down to turn.

25 Q Did you have to slow down to make that turn?

1 A After he did, yes.

2 Q So he had slowed down, and then presumably did he speed
3 back up again?

4 A Yes, ma'am.

5 Q But you had to slow down as well to make that turn?

6 A Fair enough.

7 Q Now, you said that you -- you testified that you thought
8 you saw where the gun -- or the black object fell; correct?

9 A Correct, ma'am.

10 Q But you're still running?

11 A Yes, ma'am.

12 Q You're in motion at this point?

13 A Correct, ma'am.

14 Q And you -- you didn't stop running to look at it; right?

15 A No. I just saw it. He was in front of me; I saw him throw
16 it; and I just kept chasing him.

17 Q Kept chasing. All right. You saw the black object, but
18 you didn't pick it up?

19 A No, ma'am.

20 Q Okay. So up until that point, you can't be 100 percent
21 certain what it is?

22 A No, ma'am.

23 Q And now -- could I have -- now, you testified that you
24 heard something, which you thought was this object hitting the
25 ground; correct?

1 A Not that I thought it was. I mean, I heard that object hit
2 the ground.

3 Q Okay. Well, let's talk about it.

4 So you say it fell in this area here?

5 A Yes, ma'am.

6 Q And so there is a lot of debris, glass, branches?

7 A Yes, ma'am.

8 Q So what you would have heard is something hitting glass,
9 debris, or branches; right?

10 A Whatever was there at that time.

11 Q Whatever was there. And there was more there at that time
12 than is in this photograph; correct?

13 A Correct, ma'am.

14 Q So how can you be so sure that what you heard wasn't
15 something breaking under your foot?

16 A Because, as I saw it fall, I could hear it. Timing and
17 sight.

18 Q But you're running at the time, aren't you?

19 A Correct.

20 Q And Mr. Lucas is still running ahead of you?

21 A Correct, ma'am.

22 Q How do you know it wasn't something breaking under his
23 foot?

24 A I guess I don't know; but, when I saw something fall, and
25 it simultaneously hit the ground and made a sound, I --

1 Q So you drew the inference that you were hearing what you
2 thought you saw thrown?

3 A Yes, ma'am.

4 Q But you can't be 100 percent certain of anything because --

5 A A hundred percent? No, ma'am.

6 Q All right. Now, you tackle Mr. Lucas?

7 A Correct, ma'am.

8 Q Do you ever pull out your gun to subdue him?

9 A No, ma'am.

10 Q Did you use the flashlight you were carrying as a weapon in
11 any way?

12 A No, ma'am.

13 Q So at some point you were able to get him in cuffs?

14 A Yes, ma'am.

15 Q And he acquiesced to your control?

16 A Yes, ma'am.

17 Q And when Officer Laronde got to the alley, was Mr. Lucas
18 already cuffed?

19 A Yes, ma'am.

20 Q But you kept Mr. Lucas flat on the ground?

21 A Correct, ma'am.

22 Q You said that it was Officer Laronde who recovered the gun;
23 is that correct?

24 A Correct, ma'am.

25 Q Now, did you -- were there other officers at the scene at

1 that point?

2 A At that point, no, ma'am.

3 Q All right. Now, did you take or did Officer Laronde take
4 any photographs of the gun where it was recovered?

5 A No, ma'am.

6 Q Did Officer Laronde just pick the gun up?

7 A Yes, ma'am.

8 Q Did you call evidence control units to come to the scene?

9 A They typically won't come out for that.

10 Q They typically won't come out for that?

11 A No, ma'am.

12 Q Did you attempt to call them?

13 A No, ma'am.

14 Q Do you know if Officer Laronde attempted to call them?

15 A I do not know what he did.

16 Q And when you arrested and cuffed Mr. Lucas, did you search
17 him instant to arrest to make sure he wasn't armed?

18 A Correct.

19 Q Did he have any weapons on him when you arrested him?

20 A No, ma'am.

21 Q Did he have any other illegal objects on his person?

22 A No, ma'am.

23 Q Nothing at all.

24 At what point was it that you learned that the person
25 that you had just arrested was Lewis Lucas and not the suspect

1 of the shooting?

2 A I believe after I asked him his name.

3 Q Okay. And where approximately do you think you were when
4 that happened?

5 A I'm not sure.

6 Q Okay. And from the time that Officer Laronde first saw
7 Mr. Lucas on the front porch and when you had him arrested --
8 when Mr. Lucas was in cuffs, approximately, how much time would
9 you say had elapsed?

10 A Between three and four minutes. I mean, it's somewhere --
11 we were fighting for a couple minutes, and -- three, four.

12 Q Okay. So all this happened in less than five minutes?

13 A Yes, ma'am.

14 Q So this happened very, very quickly?

15 A Yes, ma'am.

16 Q This was a fast-developing situation?

17 A Correct, ma'am.

18 Q There wasn't a lot of time to sit back and think about what
19 was going on?

20 A No, ma'am.

21 Q You had to react very quickly?

22 A Yes, ma'am.

23 Q This was one of those types of situations that you just
24 have to go on gut instinct; correct?

25 A Correct, ma'am.

1 Q All right. Thank you.

2 MS. NEWBERGER: I have no further questions.

3 THE COURT: Any redirect --

4 Thank you, Ms. Newberger.

5 Any redirect, Mr. Fuchs?

6 MR. FUCHS: Yes, Your Honor, briefly. If I may have
7 one moment, Your Honor.

8 Your Honor, may we approach?

9 THE COURT: Sure.

10 (Conference held at the bench.)

11 THE COURT: Yes.

12 MR. FUCHS: Your Honor, Ms. Newberger asked Officer
13 Huter about the person --

14 THE COURT: Yes.

15 MR. FUCHS: -- that was wanted for the shooting, and
16 so intimated that the person who actually is the suspect in the
17 shooting was shorter, lighter, younger than Mr. Lucas. I wanted
18 to show the jury what Officer Huter was looking at and why he
19 thought --

20 THE COURT: This is the suspect photo; is that
21 correct?

22 MR. FUCHS: Yes, Your Honor.

23 THE COURT: All right. And the defense objects to
24 this?

25 MS. NEWBERGER: I do, Your Honor. I think it's

1 hearsay.

2 THE COURT: I'm sorry?

3 MS. NEWBERGER: I believe it's hearsay.

4 THE COURT: It's certainly a record. Under Rule
5 803(6), it's a business record, and it is not kept for
6 testimonial purposes. This particular business record, under
7 Rule 803(6), of the Federal Rules of Evidence is certainly a
8 public -- actually, it's under Rule 803(8).

9 MS. NEWBERGER: I mean, I guess the question --

10 THE COURT: Hold on one second, please.

11 Under Rule 803(8), this is not -- essentially
12 Rule 803(8) of the Federal Rules of Evidence may exclude police
13 reports in criminal cases, if it's written reports or matters
14 observed by police officers. So, in terms of investigative
15 reports, there is a hearsay inference that is not supported Rule
16 803(8). But with respect to this particular record kept by the
17 police department as to a suspect itself, there is no hearsay.
18 There is nothing testimonial within *Crawford v. Washington* as to
19 this particular document. And in light of the
20 cross-examination, the Government may mark this and introduce
21 this into evidence on redirect examination.

22 MR. FUCHS: Thank you, Your Honor.

23 MR. SIPPEL: Thank you, Your Honor.

24 (End of bench conference.)

25

REDIRECT EXAMINATION

1
2 BY MR. FUCHS:

3 Q Officer Huter, I'll be very brief. I am going to show you
4 what will be marked as Government's Exhibit 10. Do you
5 recognize that?

6 A Yes, ma'am -- yes, sir. Sorry.

7 Q It's all right. And what is that?

8 A That is the suspect wanted for the shooting.

9 Q And is that the suspect that you were looking for on your
10 shift on July 6 of 2009?

11 A Yes, sir.

12 Q And, obviously, does the suspect that was wanted have
13 dreadlocks?

14 A Yes, sir.

15 Q Does the suspect have a mustache?

16 A Yes, sir.

17 Q Do you believe or did you believe at the time that the
18 suspect that you were looking for that you had a picture of
19 resembled Mr. Lucas?

20 A Yes, sir.

21 Q And was that based on the picture that you had?

22 A Correct, sir.

23 Q Officer Huter, you were asked a number of questions about
24 your encounter with Mr. Lucas. I just want to go over some
25 things very briefly.

1 When you got out of the car, you were wearing a
2 T-shirt that we saw in that picture; is that correct?

3 A Yes, sir.

4 Q Did you have a vest over the top of that?

5 A Yes, sir.

6 Q And what kind of vest is that?

7 A It's a bulletproof vest.

8 Q Is there anything on top of the bulletproof vest?

9 A No, sir.

10 Q And you said your badge was on you hip; is that correct?

11 A Yes, sir.

12 Q Was it towards the front?

13 A Yes, sir. In front of my --

14 Q Okay. Were you also wearing a gun?

15 A Yes, sir.

16 Q And was the street illuminated?

17 A Yes, sir.

18 Q Now, as you were passed -- excuse me -- as you were chasing
19 Mr. Lucas down the street, there were streetlights on Wilkens
20 Avenue; is that correct?

21 A Yes, sir.

22 Q And there were streetlights on Brunswick; is that correct?

23 A Correct, sir.

24 Q And you had a flashlight in your hand; is that correct?

25 A Correct, sir.

1 Q But you said your arms were pumping because you're running
2 as fast as you could; correct?

3 A Yes, sir.

4 Q Could you see Mr. Lucas clearly in front of you from the
5 lights provided by the streetlights?

6 A Yes, sir. I don't believe the flashlight would have
7 rendered any further assistance.

8 Q Fair enough. And it was difficult for you to point the
9 flashlight at him because you were running as fast as you could;
10 is that correct?

11 A Correct.

12 Q Was Mr. Lucas also swinging both arms as he ran?

13 A No, sir.

14 Q What were his arms doing?

15 A His left arm was swinging freely. His right arm was
16 hanging down on his front waistband.

17 Q Now, as you got into the alleyway, you mentioned that there
18 are streetlights adjacent to the alleyway; is that correct?

19 A Yes, sir.

20 Q But they don't point into the alleyway; is that correct?

21 A Correct.

22 Q Was there enough light from those streetlights to at least
23 partially illuminate the alleyway?

24 A Yes, sir.

25 Q And you mentioned that, as you went into the alleyway, at

1 that point you started actually using your flashlight; is that
2 correct?

3 A Yes, sir.

4 Q And at that point, how far behind Mr. Lucas were you?

5 A Again, approximately 10 feet.

6 Q Okay. And is it your testimony today that you could see
7 Mr. Lucas in front of you?

8 A Yes, sir.

9 Q And could you see him reach into his pants and draw
10 something out?

11 A Yes, sir.

12 Q And you couldn't positively identify it as a gun, but you
13 believed it looked liked a gun; is that correct?

14 A Yes, sir. I -- looking at the size, shape, the manner in
15 which he was running, everything drew to the conclusion that it
16 was a gun.

17 Q Is that based on your training, based on your experience,
18 that's what you saw that night?

19 A Based on all the training I've had five years on the
20 street, other encounters with handguns .

21 Q And what did you see him do with that object?

22 A Throw it across his body over to the left.

23 Q And Ms. Newberger asked you several questions about what
24 you heard. As you sit here today, do you remember hearing or at
25 least what you thought hearing that object land?

1 A Yes, sir.

2 Q Okay. Ms. Newberger asked if you called evidence control
3 when you were back in that alleyway. Did you call evidence
4 control?

5 A Not -- the crime lab?

6 Q Correct.

7 A No, we did not call the crime lab.

8 Q And why did you not call the crime lab?

9 A Crime lab typically won't come out to take pictures of
10 handguns not used in a crime.

11 Q What do they typically respond to?

12 A Shootings, homicides, or if a handgun is recovered from a
13 shooting or homicide or a robbery.

14 MR. FUCHS: Court indulgence, Your Honor.

15 (Pause.)

16 No further questions, Your Honor.

17 THE COURT: Thank you.

18 Any further recross just on these points,

19 Ms. Newberger?

20 MS. NEWBERGER: Your Honor, may I have one moment,
21 please?

22 THE COURT: Certainly.

23 (Pause.)

24 Mr. Fuchs, just for the record, the photograph of
25 the suspect that was introduced as Government's Exhibit 11,

1 not Number 10.

2 MR. FUCHS: I apologize, Your Honor.

3 THE COURT: That's all right.

4 Thank you, Mr. Thompson.

5 DEPUTY CLERK: You're welcome.

6 MS. NEWBERGER: Your Honor, I'll try to be brief.

7 RECROSS-EXAMINATION

8 BY MS. NEWBERGER:

9 Q Officer Huter, have you testified previously in this
10 courtroom regarding this case?

11 A Yes, ma'am.

12 Q On April 23rd, 2010?

13 A Correct, ma'am.

14 Q And when you took the stand, did you, as you did today,
15 swear under oath to tell the truth?

16 A Yes, ma'am.

17 MS. NEWBERGER: Your Honor, may I approach the
18 defendant -- excuse me -- the witness?

19 THE COURT: Certainly.

20 BY MS. NEWBERGER:

21 Q I'm approaching with what has been previously marked -- I
22 apologize -- incorrectly as Defendant's Exhibit 11, for
23 identification purposes.

24 DEPUTY CLERK: Number 12.

25 THE COURT: Defendant's Exhibit 12.

1 MS. NEWBERGER: Oh, is it 12? I apologize, Your
2 Honor.

3 BY MS. NEWBERGER:

4 Q Now, do you recall that you were asked about your clothing
5 at that hearing?

6 A Yes, ma'am.

7 Q And your testimony today was that your vest was most
8 definitely on top of your T-shirt?

9 A I believe it was, yes.

10 Q Now, at the hearing that was previously held, when I asked
11 whether the vest was underneath your clothing or on top of it,
12 how did you respond to that question? I direct you to line 22.

13 A Line 22?

14 Q Mm-hmm.

15 A It says, "I do not recall which way I had it at the time."

16 Q Okay. So how do you now remember what you didn't remember
17 back in April?

18 A I always wear my vest over my shirts every day.

19 Q Every day? Then why couldn't you answer that question on
20 April 23rd?

21 A I don't know, ma'am. I always wear my vest on the outside.
22 I don't know why I said, "I do not recall," but --

23 Q And you just testified that you thought you had seen a
24 photograph of the suspect and thought that Mr. Lucas bear
25 resemblance to that shooting suspect?

1 A Correct, ma'am.

2 Q And so the whole entire time you were chasing him, you
3 believed he is the suspect in a shooting that occurred on
4 Brunswick?

5 A Correct, ma'am.

6 Q But you -- but you never pulled out your weapon?

7 A No, ma'am.

8 Q Any time?

9 A No, ma'am.

10 Q And at that point, when you first arrested Mr. Lucas, this
11 looked like it was the case of potentially an arrest of a
12 shooting suspect; correct?

13 A Correct, ma'am.

14 Q But you didn't call ECU? Isn't that one of the types of
15 cases that ECU responds to?

16 A ECU is our Evidence Control Unit. It would not respond to
17 that.

18 Q The crime lab. I apologize. Thank you for correcting me,
19 the crime lab.

20 A No. The crime lab was not called out, because we found out
21 the identification of Mr. Lucas at the scene; therefore, we
22 didn't call, because he was not the shooting suspect.

23 Q But wasn't the gun retrieved before you learned Mr. Lucas'
24 identity?

25 A His identity was found out at the scene. I mean, it's

1 not -- as soon as we recover a gun, we don't call for
2 evidence -- or for crime lab to come out. We recovered his name
3 at the scene. If he came back as a person, then --

4 Q Then maybe you would have called the crime lab?

5 A Correct.

6 Q But there was nothing that stopped you from calling the
7 crime lab?

8 A No.

9 Q You just decided not to call?

10 A From judgment and from previous experiences with them, I
11 know when it's --

12 Q And you didn't take a photograph?

13 A No, ma'am. I don't have a digital camera on me.

14 MS. NEWBERGER: I have no further questions, Your
15 Honor.

16 THE COURT: Thank you, Ms. Newberger.

17 Officer Huter, you may step down. You shouldn't
18 discuss your testimony with anyone until this case is concluded,
19 in the event you're called back to the witness stand. Thank you
20 very much.

21 THE WITNESS: Thank you, sir.

22 (Witness excused.)

23 THE COURT: Next witness, Mr. Fuchs?

24 MR. FUCHS: Your Honor, we're going to call -- may we
25 approach? We may have a scheduling issue here.

1 (Conference held at the bench.)

2 MR. FUCHS: Your Honor, Dan Kerwin, Special Agent, was
3 going to do the nexus report. He's got a conflict tomorrow. I
4 am just wondering, how late does the Court plan on sitting?

5 THE COURT: I was going to stop around 20 after 4:00,
6 because I've got a conference call in a case with Traci Robinson
7 and Malik Edwards in your office in another case. And I was
8 trying to push that to 5:00, but Ms. Robinson says she can't do
9 it at 5:00. So we're going to have to stop at 20 after 4:00.

10 MR. FUCHS: In that case, and I apologize for going
11 somewhat out of order here. I will call Special Agent Kerwin
12 now.

13 THE COURT: He is on the interstate nexus.

14 MR. FUCHS: He's the nexus guy.

15 THE COURT: Any problem?

16 MR. HURSON: No problem from my perspective. What
17 about you?

18 MS. NEWBERGER: No. But I think, just sort of
19 anticipating the scheduling issue, I think then if Mr. Fuchs
20 called his next witness as Officer Laronde, I do not think we
21 would finish by 4:20.

22 MR. FUCHS: I think that's what I'm asking. If the
23 Court wants to stop after Agent Kerwin's testimony, it would be
24 relatively -- I suspect, relatively short.

25 THE COURT: There's no reason to stop. We'll wait and

1 see. We may just get partway through it, and stop for the day.
2 That's all. We'll see how the jury is doing.

3 What we're going to do is tell the jury we're going
4 till 20 after 4:00 and call it a day then. We'll go with
5 Kerwin, and it then we'll start with Laronde and pick up at 9:30
6 in the morning.

7 Is that agreeable with everybody?

8 MR. HURSON: That's fine. I was just going to alert
9 the Court that it's kind of unusual, but you do -- Katherine and
10 I just tried a gun case, and we have been making an objection to
11 the interstate nexus testimony. I don't want to tie up the
12 entire -- I told Mr. Sippel, I don't want to jump up and object.
13 So if it serves purposes, I would make the objection now.

14 THE COURT: What is it --

15 MR. HURSON: I think what he's going to say is he
16 looked in a book, and that he determined that this gun --

17 THE COURT: All right.

18 MR. HURSON: -- traveled in interstate commerce.

19 THE COURT: Qualify him as an expert first.

20 MR. HURSON: Easily, and I'm not going to object to
21 that. Basically, my position -- our position, it's not
22 necessarily an office position, but in the wake of the
23 *Melendez-Diaz* case --

24 THE COURT: In the aftermath of *Crawford v.*
25 *Washington*.

1 MR. HURSON: Yeah. 129 Supreme Court 2527, that's a
2 2009 case. *Crawford*, Federal Rules of Evidence, and the Sixth
3 Amendment confrontation clause, our position is, and my
4 objection would be, that Agent Kerwin's entire testimony
5 regarding interstate nexus should be barred because it's
6 entirely based on hearsay.

7 I recognize that this is a developing area, and I also
8 recognize that experts have been entitled to rely on hearsay,
9 I'm not blind to that fact, but our position is that, when it's
10 an element of the offense, like this, and when really, as I'll
11 clarify in my very short questioning, his opinion is almost
12 entirely based on what somebody else did and what somebody else
13 wrote, that somebody else being someone we're not able to
14 cross-examine, that that's a violation of confrontation, and
15 then the other rules I've listed. I just want to preserve that
16 argument, anticipating potentially the Court's ruling.

17 THE COURT: *Melendez-Diaz* and then the aftermath of
18 *Crawford v. Washington*, on the testimonial nature of whether or
19 not it's based upon hearsay inferences, it is my understanding
20 this witness is going to be qualified as an expert, and the area
21 of his expertise, he is going to testify as to his knowledge
22 that the gun is not manufactured in Maryland --

23 MR. HURSON: Right.

24 THE COURT: -- and it's manufactured in Brazil.
25 Certainly, as to his area of expertise, he is going to be able

1 to establish, based on his knowledge, that there is no
2 manufacturer of the gun in Maryland; and then he is going to
3 testify that it's manufactured in Brazil, and it goes to the
4 weight, not the admissibility, in terms of whether or not the
5 jury believes that, because, obviously, if it's manufactured in
6 Brazil and not Maryland, at some point in time it traveled
7 interstate to get in the state of Maryland.

8 MR. SIPPEL: If I may, Your Honor? The specific brand
9 of gun is a Taurus. It's actually stamped on the gun "Made in
10 Brazil." So I believe that would take us right outside of the
11 hearsay issues.

12 THE COURT: I'm not sure this is a case or the vehicle
13 to pursue that, quite frankly, Mr. Hurson, in light of the facts
14 of this case, but you've made your record on that, and your
15 objection is overruled.

16 MR. HURSON: I anticipated that. I just wanted to put
17 it on the record.

18 THE COURT: I'm not sure this is the case that you
19 want to take that issue -- or whatever, but your objection is
20 certainly noted, and it's overruled.

21 MR. HURSON: Thank you. And I will not be objecting,
22 but I will maybe renew this in JOA, but I'm not going -- I
23 believe the record is sufficient that I don't need to object
24 when he makes his conclusions.

25 MR. FUCHS: Your Honor, just one last thing. Would

1 you mind explaining to the jury why we're sort of going out of
2 order here?

3 THE COURT: To say this is a witness called as an
4 expert in the interstate nexus of a firearm, and because of
5 scheduling issue, he's going to be testifying now and not
6 tomorrow.

7 MR. FUCHS: Thank you, sir.

8 (End of bench conference.)

9 THE COURT: All right. Ladies and gentlemen, here's
10 our scheduling issue that was brought up. We're going to sit
11 till around 20 after 4:00, and not take a break, like we usually
12 do in the afternoons, because of some scheduling issues. We'll
13 stop for the day and start at 9:30 tomorrow morning.

14 The next witness is a witness who is being proffered
15 as an expert with respect to the interstate nexus of the
16 firearm. As the lawyers have both alluded to, there has to be
17 an interstate transportation of a firearm, and that's the
18 witness who's next being called to testify. He has a scheduling
19 issue for tomorrow, and both sides agree he'll probably be a
20 very brief witness, so he is going to testify next. And I'll
21 explain to you the matter of expert testimony in a moment.

22 And then the third witness we'll start with, and we'll
23 stop midway through his testimony at 20 minutes after 4:00, and
24 then we'll call it a day, if that's --

25 Is everyone okay with 20 minutes after 4:00?

1 Mr. Thompson runs a tough ship. If any of you waves,
2 he gives me the word. If somebody waves to him over there, if
3 they need the facilities, or something, but let's see if we can
4 keep going for another 35 minutes, and then call it a day.

5 Is that all right with you, Mr. Thompson?

6 DEPUTY CLERK: That's good.

7 THE COURT: That's good. All right. With that, then
8 we're ready to --

9 If you'll get that document back. Thank you, Mr.
10 Hurson.

11 With that, we're ready to call our next witness.

12 MR. SIPPEL: Yes, Your Honor. The Government calls
13 Special Agent Daniel Kerwin.

14 (Juror motioning to Deputy Clerk.)

15 THE COURT: We're going to need to take a recess now
16 then for about five minutes. Is there any reason -- I think
17 this can be a very short facilities break. The defendant does
18 not need to leave the courtroom, as far as I'm concerned. We'll
19 just take a quick five-minute recess here and be back starting
20 in five minutes. We'll take a five-minute recess.

21 (Recess taken.)

22 THE COURT: Mr. Thompson, if you'll get the jury,
23 please.

24 DEPUTY CLERK: Jurors all present.

25 THE COURT: Thank you, ladies and gentlemen.

1 Mr. Thompson, thank you.

2 Swear the witness please. Thank you.

3 DEPUTY CLERK: Please raise your right hand.

4 DANIEL KERWIN, GOVERNMENT WITNESS, DULY SWORN

5 DEPUTY CLERK: Be seated. And, sir, if you would
6 adjust that microphone to yourself. State your name and then
7 spell your name for the record.

8 THE WITNESS: Daniel Kerwin, K-E-R-W-I-N.

9 THE COURT: Thank you.

10 Counsel?

11 MR. SIPPEL: Thank you.

12 DIRECT EXAMINATION

13 BY MR. SIPPEL:

14 Q Special Agent Kerwin, with whom do you currently work?

15 A I'm a special agent with the Bureau of Alcohol, Tobacco,
16 Firearms and Explosives; specifically, I am assigned to the
17 high-intensity drug trafficking group within the Baltimore Field
18 Division.

19 Q And how long have you been a special agent with ATF?

20 A Since February 18, 2008.

21 Q Special Agent Kerwin, if you would, please, describe to the
22 ladies and gentlemen of the jury a little bit about the types of
23 training that you received as an ATF agent.

24 MR. HURSON: Your Honor, the defense will stipulate
25 that he is an expert as proffered in their notice to the

1 defense.

2 THE COURT: All right. If you want to just briefly go
3 through this, Mr. Sippel, that's fine.

4 The defense has noted the expertise of this witness.
5 This witness is being proffered as an expert in interstate
6 nexus. The defendant is not challenging his expertise, and he
7 will be qualified shortly as an expert in that area.

8 Just briefly then, Mr. Sippel, if you'd like.

9 MR. SIPPEL: Sure.

10 BY MR. SIPPEL:

11 Q Just give the ladies and gentlemen of the jury a brief
12 synopsis of your training, focusing specifically on firearms
13 analysis and interstate nexus analysis.

14 A Certainly. I completed my criminal investigative training
15 program at the Federal Law Enforcement Training Center.
16 Additionally, I completed the ATF special agent basic training
17 program, much of which focused on firearms. And I completed the
18 ATF interstate nexus expert training program located in our
19 firearms training branch in Martinsburg, West Virginia.

20 Q Special Agent Kerwin, have you performed interstate nexus
21 analysis on firearms?

22 A Yes, sir, I have.

23 Q Approximately how many times have you performed that
24 analysis?

25 A I'd say approximately 150.

1 Q And, Special Agent Kerwin, have you been accepted as an
2 interstate nexus expert in federal court?

3 A Yes, I have.

4 Q Approximately how many times?

5 A I believe six times previous.

6 MR. SIPPEL: Your Honor, at this time the Government
7 offers Special Agent Daniel Kerwin as a firearms and interstate
8 nexus expert.

9 THE COURT: Yes. And the defense stipulates to his
10 expertise; is that correct, Mr. Hurson?

11 MR. HURSON: That is correct, Your Honor.

12 THE COURT: Ladies and gentlemen, normally a witness
13 is not permitted to give his or her opinion on a matter. The
14 exception to that is if a person is qualified as an expert.
15 When a person is qualified as an expert, they're permitted to
16 give their opinion.

17 As with all witnesses, it's up to you to accept or
18 reject the testimony of a witness. But this gentleman is
19 qualified as an expert in the area of interstate transportation
20 and nexus of firearms, so he is permitted to given his opinion
21 in that matter.

22 Thank you very much.

23 You may continue, Mr. Sippel.

24 MR. SIPPEL: Thank you, Your Honor.

25 BY MR. SIPPEL:

1 Q Special Agent Kerwin, I'm going to show you what's been
2 marked and entered as Government's Exhibit Number 9.

3 A Yes, sir.

4 Q Special Agent Kerwin, have you taken a look at that firearm
5 previously?

6 A Yes, I have.

7 Q And have you been able to determine what type of firearm
8 that's been admitted as Government 9?

9 A The make is Taurus.

10 Q And were you able to determine where the Taurus brand
11 firearm is manufactured?

12 A In the country of Brazil.

13 Q And how did you make the determination that the Taurus
14 firearm that's been marked as -- or entered as Exhibit 9 was
15 manufactured in Brazil?

16 A As an interstate nexus expert, we examine the markings on
17 the firearm. Pursuant to federal law, they are required to be
18 marked with specific -- the make, model, caliber, serial number,
19 and where the firearm is made. And this one actually says it's
20 made in the country of Brazil.

21 Q And, Special Agent Kerwin, did you review any publications
22 to assist you in confirming that the Taurus firearm was
23 manufactured in Brazil?

24 A Yes, I did.

25 Q And what publication did you review?

1 A The Blue Book of Gun Values.

2 Q And is The Blue Book of Gun Values the type of publication
3 that a firearms or interstate nexus expert would utilize in
4 determining where a particular firearm was manufactured?

5 A Yes. It's one of the methods. Additionally, it's relied
6 on by the general public to determine the value of firearms.

7 Q And, Special Agent Kerwin, do you have any other knowledge
8 or experience with Taurus brand firearms?

9 A Yes. Many of the firearms I perform interstate nexus
10 examinations on are Taurus firearms; and, additionally, I
11 actually own a Taurus firearm.

12 Q And do you know whether Taurus name -- I'm sorry -- Taurus
13 brand firearms have ever been manufactured in the state of
14 Maryland?

15 A No, they have not.

16 Q And other than Brazil, are you aware of whether Taurus
17 brand firearms are manufactured anywhere else?

18 A There are two specific models, to my knowledge, that are
19 manufactured in the state of Florida.

20 Q And, Special Agent Kerwin, finally, getting to the
21 question, do you have an opinion as to whether the subject
22 Taurus firearm affected interstate commerce?

23 MR. HURSON: Objection, Your Honor. I think that's an
24 ultimate-issue question.

25 THE COURT: You may rephrase the question, Mr. Sippel.

1 MR. SIPPEL: Okay.

2 BY MR. SIPPEL:

3 Q Special Agent Kerwin, because a Taurus firearm was
4 manufactured in Brazil, did it cross state lines prior to its
5 recovery in Maryland?

6 A Yes.

7 MR. SIPPEL: No further questions, Your Honor.

8 THE COURT: Thank you.

9 Mr. Hurson, cross-examination?

10 MR. HURSON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. HURSON:

13 Q Agent Kerwin, did you ever contact anyone at Taurus to
14 discuss the firearm -- I think you have it in front of you right
15 now.

16 A Yes, sir. Yes, I did.

17 Q You did contact someone?

18 A Yes.

19 Q Did you write a report about that?

20 A No, I did not.

21 Q When did you make that contact?

22 A Earlier today.

23 Q Today you made that? Who did you call?

24 A I called their customer service. And, additionally, I
25 checked the serial number against their website.

1 Q Okay. Their website. But you don't have any input on the
2 creation of their website?

3 A No, I do not.

4 Q In that Blue Book of Gun Values, you checked that firearm,
5 which you say is a firearm, with that Blue Book of Gun Values;
6 is that correct?

7 A Yes, sir.

8 Q You didn't write The Blue Book of Gun Values; right?

9 A No, sir.

10 Q Somebody else did?

11 A Yes, sir.

12 Q Now, how long have you been with the ATF?

13 A Since February 19th, 2008.

14 Q As a Special Agent?

15 A Yes, sir.

16 Q You said before that you had some assignment with the
17 high-intensity drug force, something like that; right?

18 A Yes, sir. That's the group I'm assigned to.

19 Q Now, this case has absolutely nothing to do with narcotics;
20 correct?

21 A I don't know any of the facts of this case.

22 Q Okay. But you're here solely to opine on where that gun
23 came from; right?

24 A That's correct.

25 Q And it's often that that's what you do; right?

1 A That's correct.

2 Q Now, the Bureau of Alcohol, Tobacco and Firearms, as an
3 agent and somebody that's worked there for a while, you're aware
4 that they have fingerprint technology; correct?

5 MR. SIPPEL: Objection, Your Honor. Beyond the scope
6 of direct examination.

7 THE COURT: Sustained.

8 MR. HURSON: Your Honor, if I may?

9 THE COURT: Why don't you approach the bench, please?

10 MR. HURSON: Okay.

11 (Conference held at the bench.)

12 MR. HURSON: Can you hear?

13 I'm really going to ask him two questions, because he
14 said that's where he worked; he's opined about what he does. I
15 think it's --

16 THE COURT: He has no more qualifications to provide
17 expert testimony than anybody else that works for ATF.

18 MR. HURSON: I'm not asking him to give an expert
19 opinion about fingerprints. I'm just asking what capabilities
20 does ATF have.

21 THE COURT: Objection is sustained. You're certainly
22 free to present testimony in that regard, Mr. Hurson. He is no
23 more qualified to talk about fingerprint testimony than anybody
24 else who works for ATF. Call the case agent, if you want.

25 MR. HURSON: That was --

1 THE COURT: Cross-examine this witness. This witness
2 is strictly an interstate nexus expert. He has absolutely
3 nothing to do with fingerprints.

4 MR. HURSON: That's why I narrowed the point to save
5 time, because I think --

6 THE COURT: It's totally --

7 MR. HURSON: He knows the same thing --

8 THE COURT: -- outside the scope of direct. This
9 witness is not qualified. You're certainly free to call --

10 MR. HURSON: That's fine.

11 THE COURT: Thank you.

12 (End of bench conference.)

13 THE COURT: Objection sustained.

14 BY MR. HURSON:

15 Q Finally, you were not at the intersection of Wilkens and
16 Brunswick in 2009; right?

17 A No.

18 Q You were nowhere when this thing was supposedly recovered;
19 right?

20 A No, I was not.

21 MR. HURSON: Court's indulgence.

22 No further questions.

23 THE COURT: Thank you, Mr. Hurson. Thank you very
24 much.

25 MR. SIPPEL: Thank you, Your Honor.

1 THE COURT: Special Agent Kerwin, you may step down.
2 You shouldn't discuss your testimony with anyone in the event
3 you are called back to the witness stand before this trial is
4 finished. Thank you very much.

5 (Witness excused.)

6 Yes, Mr. Fuchs?

7 MR. FUCHS: Your Honor, the Government calls Officer
8 Fabien Laronde.

9 DEPUTY CLERK: If you would raise your right hand.

10 FABIEN LARONDE, GOVERNMENT WITNESS, DULY SWORN

11 DEPUTY CLERK: Please be seated.

12 Sir, if you would, adjust the microphone to yourself.

13 State your name and then spell your name for the record.

14 THE WITNESS: Officer Fabien Laronde; F-A-B-I-E-N,
15 L-A-R-O-N-D-E.

16 DEPUTY CLERK: Thank you.

17 Counsel?

18 MR. FUCHS: Thank you, sir.

19 DIRECT EXAMINATION

20 BY MR. FUCHS:

21 Q Officer Laronde, who do you work for?

22 A Baltimore City Police Department.

23 Q What's your current assignment?

24 A Right now I'm currently assigned to the Southwest District
25 Operations.

1 Q And how long have you been a police officer?

2 A A little over eight years.

3 Q Were you working on July 6 of 2009?

4 A Yes, sir, I was.

5 Q If you remember, what shift were you working that day?

6 A Working 6:00 p.m. to 2:00 a.m. shift.

7 Q Were you in uniform that night?

8 A Plain clothes.

9 Q Were you in a car?

10 A Yes.

11 Q Was it a marked car?

12 A Unmarked car.

13 Q And who else was in the car with you?

14 A Officer Huter.

15 Q And who was driving?

16 A I was driving.

17 Q And what area of the city were you patrolling that day?

18 A On that particular night, we were assigned to 835 post,
19 which is the area of the southwest, around Brunswick and Wilkens
20 Avenue.

21 Q Okay. I'm going to show you what's been previously
22 admitted as Government's Exhibit Number 1. Do you recognize
23 that, sir?

24 A Yes.

25 Q And what is it?

1 A It's an overview, aerial view of that area. It's actually
2 the 2700 block and the 500 and 900 block of Brunswick.

3 Q And, if you would, just point out to the jury where Wilkens
4 Avenue is.

5 A Wilkens Avenue is the street that runs --

6 Q If you hit the top-right-hand corner, it will erase
7 whatever mark you made.

8 THE COURT: Bottom-left-hand corner, I believe.

9 THE WITNESS: This, and this is Wilkens Avenue. It
10 runs east and west.

11 BY MR. FUCHS:

12 Q Okay. And then where is Brunswick?

13 A Brunswick Street is -- this is the 500 block, and this is
14 the 900 block.

15 Q All right. If you would, just remove those marks.

16 Did you encounter anyone that night in that area?

17 A Yes, we did.

18 Q Who did you encounter?

19 A At one time it appeared during the night we came in contact
20 with Mr. Lucas, sitting in between counsel right here.

21 Q Okay. And if you could just point out a item of clothing
22 Mr. Lucas is wearing?

23 A The checkered shirt and blue tie.

24 MR. FUCHS: Your Honor, for the record --

25 THE COURT: Let the record reflect the witness has

1 identified the defendant, Lewis Lucas.

2 BY MR. FUCHS:

3 Q Officer Laronde, prior it that night, had you ever met
4 Mr. Lucas?

5 A No, I hadn't.

6 Q Had you had any contact with him whatsoever?

7 A No.

8 Q Now, if you remember, what time approximately did you meet
9 Mr. Lucas?

10 A It was about 2:00 a.m. We were actually -- the station is
11 located about a block east of Wilkens Avenue. We were headed
12 into the station.

13 Q Okay. And, if you would, just using the map, just describe
14 the route you took leading up to the encounter.

15 A We were actually coming off of Brunswick, right here, and
16 just headed into the station. Like I said, the station is about
17 a block this way, off the map.

18 Q What did you see?

19 A As we drove down the block, I turned my head. I noticed
20 Mr. Lucas walking up, and he was walking up to a home. I think
21 it was about right over here. He was walking up the steps up to
22 the front door.

23 Q Okay. And what was he doing, other than walking up to that
24 porch?

25 A He was just walking up to the porch.

1 Q Okay. And did you decide to talk to him?

2 A Yes.

3 Q And why is that?

4 A We -- we're an operations unit, and we're dispatched to
5 pretty much -- wherever there is -- we're like a hot-spot unit.
6 Wherever something goes on, violent crime, high drugs, we end up
7 going to that area. And we were dispatched to that particular
8 area, because there was a shooting in the 500 block of Brunswick
9 Street.

10 We were furnished with a picture of a person who was
11 wanted in reference to it, for questioning or -- I believe it
12 was for questioning. And it looked like Mr. Lucas as the man I
13 saw walking on the steps.

14 Q What was similar about the two men?

15 A They were both tall, medium built, and they both had long
16 braids.

17 Q And so what did you decide to do?

18 A We decided to drive our vehicle, turn around, just stop and
19 talk to him, to see what he was doing, if it was the same guy or
20 not.

21 Q Okay. And, if you would, just draw on the map the route
22 you took up to Mr. Lucas.

23 A Like I said, we were coming this way, and I saw him on the
24 steps here as we passed. At that time we made the decision we
25 were going to stop and talk to him. I continued. There is a

1 medium strip right here. I made a U-turn and stopped about
2 right in front of him. Right in front of the home where I saw
3 him, right there.

4 Q And you were driving; is that correct?

5 A Yes, sir.

6 Q And were you the first person to see Mr. Lucas?

7 A Yes.

8 Q Okay. And where did you stop the car?

9 A Just about a little bit before the house where I observed
10 him.

11 Q Okay. Did you get out of the car?

12 A No, I didn't. Officer Huter got out of the vehicle.

13 Q What did you see Officer Huter do?

14 A Once Officer Huter walked out, he walked up to the
15 defendant and asked if he could speak to him, said something
16 along the lines of, can I talk to you for a minute.

17 Q And where was Mr. Lucas during this time?

18 A When we saw him originally, he was walking up to the front
19 door. When Officer Huter started talking to him, he was like on
20 the top of the porch, facing Officer Huter.

21 Q Did Officer Huter at any point put his hands on Mr. Lucas
22 that you saw?

23 A No.

24 Q Did you see Officer Huter draw his weapon?

25 A No.

1 Q What happened after Officer Huter asked Mr. Lucas if he
2 could speak to him?

3 A Everything happened very fast, and it was just a continuous
4 chain of events. As Huter was talking to him, the defendant was
5 coming off the porch, and he began backing away, asking Officer
6 Huter, Who? Me? Who? Me? And then his backing turned into
7 skipping, and the skipping turned into a turn and a run.

8 Q When you say "skipping," and with the Court's permission,
9 can you just show the jury what you mean?

10 MR. FUCHS: Your Honor, would that be all right?

11 THE COURT: Certainly.

12 THE WITNESS: When Huter approached, he said something
13 like, can I talk to you. And Mr. Lucas backed up. He said,
14 Who? Me? Who? Me? There was no one else out there. Then he
15 started skipping, backed twice, and then turned this way, and
16 just started running.

17 MR. FUCHS: You can go ahead and take your seat.

18 Thank you.

19 BY MR. FUCHS:

20 Q At any point did you see Mr. Lucas reaching for anything?

21 A Once he started -- he started skipping. When he was
22 skipping, he kept reaching for his waist with his right hand;
23 and then, when he turned, he bent at the waist, grabbed his,
24 like, belt area, and started running.

25 Q Now, were you still in the car during all of this?

1 A Yes.

2 Q How far away were you from Mr. Lucas and Officer Huter?

3 A I'm going to say probably about two and a half car lengths
4 away.

5 Q Okay. And were the streetlights on?

6 A All the lights were on, yes.

7 Q Okay. Could you see clearly what was going on?

8 A Clearly.

9 Q Okay. Could you hear everything that was going on?

10 A I could hear -- the original conversation I heard, and then
11 I could hear bits and pieces. I couldn't hear exactly what they
12 were saying.

13 Q Okay. Now, you said, when he skipped backwards, he was
14 reaching towards his waistband area; is that right?

15 A Yes, sir.

16 Q Have you had some training in recognizing the
17 characteristics of an armed person?

18 A Yes.

19 Q Where did you get that training?

20 A I received that in the police academy, and then we have
21 additional session of training that I went to.

22 Q And what are some of the characteristics of armed people?

23 A It's known as a gun check. If someone is carrying a gun,
24 they tend to check, they just touch it, to make sure it's still
25 there, it hasn't moved, so it doesn't shift. Like I say,

1 they'll pat it; they'll grab it. If they start to walk, they'll
2 immediately grab it, so it doesn't fall. They'll bend at the
3 waist. He displayed all the characteristics of an armed person.

4 Q Based on that, did you draw any conclusions?

5 A Yes.

6 Q What was it?

7 A That the defendant could possibly be carrying a weapon.

8 Q Now, in fairness, did you see a gun at any point?

9 A No.

10 Q Okay. Now, you said, after Mr. Lucas started skipping
11 backwards, he then turned and ran; is that correct?

12 A Yes.

13 Q If you would, on the map, and if you can clear out all
14 those marks, can you show us where you saw Mr. Lucas run?

15 A He came down off the porch around here, started skipping
16 here, and then turned and ran up here, and then cut through this
17 lot, and then down the sidewalk on Brunswick.

18 Q Did you get out of your car at any point?

19 A At this point, no.

20 Q What did you do?

21 A I paralleled the defendant and my partner. Once they
22 started running, I followed the quickest route I could take with
23 the vehicle.

24 Q And while you were following parallel, how far away, just
25 approximately, were you from Mr. Lucas?

1 A Mr. Lucas was -- I mean, in no time, it was just a car
2 length. It was my car on the street, another car length here,
3 and then he was over here.

4 Q When you say "car length," do you really mean car width?

5 A Car width. I'm sorry.

6 Q And in feet, what would you approximate?

7 A Probably about less than 20 feet.

8 Q Did you keep Mr. Lucas in sight at all times as he ran down
9 Wilkens and then down Brunswick?

10 A I had him in sight on Brunswick until he made an alley --
11 there is an alley down -- if he continues to run -- let me make
12 sure.

13 If he continues to run down here, then there is a
14 small alley. It's very narrow in between the houses. There is
15 a fence, and there's a fence and a house, and a small space,
16 small alleyway.

17 Q Okay. But prior to him running up that alley, you kept him
18 in sight; is that correct?

19 A Yes.

20 Q And there were streetlights on Wilkens and on Brunswick; is
21 that correct?

22 A Yeah. This is a major intersection. There are street
23 lamps located all throughout.

24 Q And so you could see him clearly; is that correct?

25 A Yes.

1 Q And where was Officer Huter?

2 A Huter was right behind him, chasing him on foot.

3 Q Okay. Did you notice anything about the way Mr. Lucas was
4 running?

5 A He was still running holding his waist, like he was holding
6 something in his waist.

7 Q And you could see that from where you were parallel to him?

8 A Yes.

9 Q Now, you said he ran up that alleyway?

10 A Yes.

11 Q And you lost sight of him at that point; is that correct?

12 A Yeah. Once he turned into that alley, it's -- there's a
13 fence there; it's a high fence, and it's got ivy, and it's
14 overgrown. It was the summertime. So I couldn't see through
15 the fence.

16 Q Okay. Where did you go?

17 A I tried to just cut him off. At the time I didn't even
18 realize I was pulling into a parking lot. I just thought I was
19 going down the street. I think it's just the adrenaline and him
20 running, and I ended up in this parking lot.

21 I stopped right about here, I guess, and I was on the
22 radio, you know, advising dispatch that my partner is in a foot
23 chase, giving locations of where we were. Whatever I could, I
24 put out on the air.

25 Q Okay. And where did you go after that?

1 A I stood here for a minute and actually got out of the car,
2 and then I ended up coming over here and something -- I saw his
3 flashlight, or he yelled to me, and I knew he was back in this
4 area, in this back alley.

5 So I ran back to -- got back into our vehicle and went
6 back to where I saw him go into the alley.

7 Q So you parked your car on Brunswick out of the alleyway.
8 Is that where you're marking?

9 A Right outside the alley; correct.

10 Q At some point did you go down the alleyway?

11 A Yes, immediately, I just ran right into the alley. Parked,
12 ran into the alley. The alley, like I said, is very narrow.
13 It's pretty dark. I came down here to the 90-degree turn, and
14 Officer Huter was standing at the top of the 90-degree turn with
15 the defendant.

16 Q Okay. What did you see when you got there?

17 A Officer Huter was placing the defendant in handcuffs.

18 Q And was the defendant resisting?

19 A At that time I couldn't really tell. They were on the
20 ground. He was putting him in handcuffs. I just assisted
21 getting the cuffs on and picking him up.

22 Q Okay. Did you have a conversation with Officer Huter?

23 A Once we got him up, he just started telling me, check over
24 there, I think he threw a gun; check over there. Just telling
25 me where to go, and that the defendant was armed; he had a gun.

1 Q Okay. Let me show you what's been previously admitted as
2 Government's Exhibit Number 8. If you would -- there you go.
3 Thank you.

4 Do you recognize that?

5 A That's the 90-degree -- that's the corner of the alley we
6 ran down.

7 Q And where did Officer Huter direct your attention?

8 A He directed me to this area.

9 Q Now, is that an approximation?

10 A Yes.

11 Q Now, in fairness, did the alleyway back in July --

12 THE COURT: What exhibit is this, Mr. Fuchs?

13 MR. FUCHS: Your Honor, this is Government's Exhibit
14 8.

15 THE COURT: Thank you.

16 BY MR. FUCHS:

17 Q Officer Laronde, did the alleyway on July 6 of 2009 look
18 the way it does in this picture?

19 A This is -- this is cleaned up a lot. It was overgrown.
20 There were trees and just debris everywhere. Someone moved in
21 and cleaned the alley, you know, cut down the trees and picked
22 up a lot of the garbage that was back there.

23 Q Now, are there any streetlights in the alleyway itself?

24 A No.

25 Q Are there streetlights nearby?

1 A This whole area, where I pulled into behind here, it's a
2 commercial business. It's a Ryder -- I think they rent Ryder
3 trucks. So it's completely illuminated, the whole parking lot
4 is lighted. So you get some light from there, plus you just
5 have the streetlights. It's illuminated, but you need
6 flashlights still.

7 Q Did you have a flashlight with you?

8 A Yes.

9 Q Was it on?

10 A Yes.

11 Q Were you using it back in that alleyway?

12 A Yes.

13 Q Okay. When Officer Huter directed you to that point in the
14 alleyway, what did you do?

15 A I immediately just started looking on the ground for a
16 weapon, and I came across the handgun.

17 Q I'm going to show you what's been previously admitted as
18 Government's Exhibit Number 9 --

19 MR. FUCHS: Permission to approach, Your Honor?

20 THE COURT: Yes.

21 BY MR. FUCHS:

22 Q -- and 9A. Do you recognize that?

23 A Yes.

24 Q What is it?

25 A That is the revolver that I recovered from the ground that

1 night.

2 Q Okay. How do you know it's the same revolver?

3 A I remember what it looked like, and it's got a property tag
4 on it that I filled out as evidence that night, after it was
5 recovered.

6 Q Okay. And is that revolver in the same condition as it was
7 back in July 6 of 2009?

8 A Yes. It's just been -- it's just got safety things on it
9 right now.

10 Q But other than that, does it look the same?

11 A Exactly the same, yes.

12 Q Now, you say you found the weapon in that area that you
13 marked on that picture; correct?

14 A Correct.

15 Q Was it in plain sight, or did you have to search around for
16 it?

17 A It was on top of the debris that was already in the alley.
18 It wasn't hidden or -- I just had to look; and, once I looked
19 for a couple seconds, it stood out. It was right there.

20 Q How long did it take you to find it?

21 A It took less than a minute to find the gun. It was right
22 there.

23 Q Was there anything on top of it?

24 A No.

25 Q Was there anything else on the ground? You said there was

1 debris.

2 A Trash and just -- garbage.

3 Q Okay. Were there any other guns on the ground?

4 A No.

5 Q Were there any drugs or drug paraphernalia on the ground?

6 A No.

7 Q Was there any other contraband on the ground?

8 A No.

9 Q Were there any other dark-colored metal objects on the
10 ground nearby?

11 A No.

12 Q When you picked the gun up, did you take a look at it?

13 A Yes.

14 Q Okay. Did you notice if it was loaded?

15 A Yes, it was loaded.

16 Q Let me direct your attention to Government's Exhibit 9A.

17 It's in that little folder there. If you could, pull those out.

18 If you could, show them so the jury can see.

19 What is that?

20 A These are rounds that were in the gun.

21 Q Okay. Was the gun fully loaded?

22 A There were nine rounds. I'd have to tell you how many it
23 takes.

24 It was fully loaded. It takes nine rounds, and there
25 were nine rounds in it.

1 Q Understood.

2 When you looked at the pistol that night, did you
3 notice if there was any dirt on it?

4 A No. Just from it being on the ground, it wasn't covered
5 with dirt or anything like that.

6 Q Was there any rust on the gun?

7 A No.

8 Q Were there any cobwebs or anything like that on the gun?

9 A Nah. You could tell it was, you know, maintained.

10 Q Was there any dirt in the barrel?

11 A No.

12 Q All right. Was there any indication whatsoever that that
13 gun had been laying in that alley for any length of time?

14 A No, definitely not.

15 Q Were you wearing gloves that night?

16 A No, I wasn't.

17 Q Did you just pick the gun up with your hand?

18 A Yes.

19 Q What did you do with it?

20 A Once I picked it up, I just secured it. I didn't unload it
21 in the alley. We took it out to the street, and I unloaded it
22 out on the hood of the car.

23 Q When you say you secured it, what do you mean by that?

24 A I just held it, and, you know, put -- I think I opened the
25 chamber, and then I just walked it out.

1 Q Did you consider just leaving it there?

2 A No.

3 Q Why not?

4 A It was evidence.

5 Q Okay. Was Mr. Lucas still in the area?

6 A Yes.

7 Q Would you ever leave a gun anywhere close to a suspect?

8 A No.

9 Q So you walked it out to your car; is that correct?

10 A Yes.

11 Q What did you do with it then?

12 A Then I unloaded it, put it in an envelope, and I secured it
13 in my car.

14 Q Did you submit it to evidence?

15 A Yes.

16 Q Did you submit it for fingerprint analysis?

17 A Yes, I did.

18 Q Officer Laronde, I am going to change subjects briefly
19 here.

20 THE COURT: Why don't you approach the bench now for
21 one second, please.

22 (Conference held at the bench.)

23 THE COURT: Okay. This may be an appropriate point to
24 stop, because I've got to start a conference call. How much
25 longer are you going to be?

1 MR. FUCHS: Your Honor, at most five minutes.

2 THE COURT: All right --

3 MR. FUCHS: I just have a few more questions.

4 THE COURT: -- direct over, because I've got both your
5 respective offices on the phone waiting for me. You'll finish
6 with him on direct tomorrow morning the first five minutes.

7 MR. FUCHS: Okay.

8 THE COURT: We'll start at 9:30. How long do you
9 think you'll be on cross, Katherine?

10 MS. NEWBERGER: Half hour.

11 THE COURT: Okay. Whatever. All right. And then the
12 next witness is --

13 MR. FUCHS: Sean Dorr.

14 THE COURT: And that's the Government's case?

15 MR. FUCHS: Yes.

16 THE COURT: Is it correct to anticipate that it will
17 go to the jury tomorrow, closing arguments?

18 MR. HURSON: Absolutely. Absolutely, yeah.

19 THE COURT: I will tell the jury we'll start promptly
20 at 9:30 in the morning, anticipating the case will go to the
21 jury tomorrow.

22 MS. NEWBERGER: Also, if you could, advise Officer
23 Laronde that he can't talk with anybody, since he is in the
24 middle of his testimony.

25 THE COURT: Okay.

1 MR. FUCHS: And, Your Honor, if it's all right, the
2 only contact I'll have with Officer Laronde is to tell him he
3 can't talk to me and Mr. Sippel.

4 THE COURT: He is on the witness stand. All right.
5 We'll see you all tomorrow at 9:30.

6 (End of bench conference.)

7 THE COURT: Ladies and gentlemen, we're going to stop
8 here and start tomorrow at 9:30.

9 Officer Laronde, you are on the witness stand and so
10 you will not be permitted to talk with Government counsel, other
11 than for scheduling purposes. You're not to discuss your
12 testimony with them because you are still on the witness stand.

13 Do you understand that?

14 THE WITNESS: Yes, sir.

15 THE COURT: And with that, we are adjourned now until
16 9:30 tomorrow morning.

17 (Proceedings adjourned at 4:22 p.m.)

18 * * * * *

19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter.
21 Any redaction of personal data identifiers pursuant to the
22 Judicial Conference Policy on Privacy are noted within the
23 transcript.

24
25

Julie A. Wycoff, RPR
Official U.S. Court Reporter

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